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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

**(Fee Schedule, Ch. Comm 2)
(Credentials, Ch. Comm 5)
(Elevators, Ch. Comm 18)**

Rules adopted revising **chs. Comm 2, 5 and 18**, relating to inspection of elevators and mechanical lifting devices.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Department inspects elevators and mechanical lifting devices to ensure these units are installed and operating in accordance with the elevator safety rules. The Department is required to inspect both new and existing elevator installations. Due to the increased number of elevators and mechanical lifting devices installed in new construction, the Department has not been able to keep up with all of its required inspections. To ensure that the citizens of Wisconsin are safe when using elevators and other mechanical lifting devices, the Department must increase the number of people performing these safety inspections.

The Department rules relating to fees, certification, and inspection procedures are being modified to permit additional individuals to perform inspections of elevators and other mechanical lifting devices. The Department proposes to fund additional inspections by amending its fees to match Department

expenses. Plan review and certificate of operation fees would be lowered. Inspection fees would be raised.

Publication Date: May 4, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 1997
Hearing Date: July 29, 1997
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Department of Corrections

1. Rules adopted creating **ch. DOC 304**, relating to inmate secure work groups.

Finding of Emergency

The Department of Corrections finds an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Effective June 1, 1997, appropriations will be made available to the Department of Corrections for the establishment of secure work groups. Section 303.063 (2), Stats. requires that if the Department establishes a secure work program, the Department shall, before implementing the program, promulgate rules specifying the procedures and regulations relating to the program. The Department has just begun the permanent rule process for establishing the administrative rules for the secure work program. It typically takes nine months for a permanent administrative rule to be promulgated from the time the permanent rule making process begins.

The Department needs to adopt administrative rules regarding the organization and operation of the secure work group program in order to have rules in place which will comply with Sec. 303.063 (2), Stats. The rules will provide for the protection of the public, the correctional officers and the inmates by providing the requirements for participation in the program as well as providing for safety and security concerns.

An emergency currently exists as the prison population is idle and needs secure work groups to provide inmates work opportunities, to prepare inmates for work opportunities upon release to the community, and to reintegrate inmates into the community.

Publication Date: May 30, 1997
Effective Date: May 30, 1997
Expiration Date: October 28, 1997

2. Rules adopted creating **ch. DOC 332**, relating to registration and community notification of sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: The legislature has directed the department to implement programs for sex offender registration and community notification by June 1, 1997. Emergency rules are necessary to implement the

June 1, 1997, timeline mandated by the legislature, inform sex offenders of registration procedures, and inform law enforcement, victims and the public of the right to access information under the procedures designed by the department. Emergency rules are necessary to implement the June 1, 1997, timeline established by the legislature while permanent rules are developed and promulgated.

Publication Date: June 1, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 1997

EMERGENCY RULES NOW IN EFFECT

Health & Family Services

(Management, Policy and Budget, Chs. HSS 1--)

Rules adopted revising **ch. HSS 1**, relating to parental liability for the cost of care for children in court-ordered substitute care.

Exemption From Finding of Emergency

The Legislature in s. 9126 (2z) of 1993 Wis. Act 481 directed the Department to promulgate rules required under s. 46.25 (9) (b), Stats., by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

Analysis

Section 46.10 (14) (b), Stats., as created by 1993 Wis. Act 481, requires that parental support for court-ordered placements under s. 48.345, Stats., for children found to be in need of protection or services, and s. 938.183 (2), 938.34, 938.345 or 938.357, Stats., for youth adjudged delinquent, be established according to the child support percentage of income standard in ch. HSS 80, and s. 46.25 (9) (b), Stats., as created by Wis. Act 481, directs the Department to promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court-ordered substitute care cases. The rules are to take into account the needs of any person, including dependent children other than the child going into care, whom either parent is legally obligated to support. The rules proposed here will address these and other issues related to support for children in court-ordered substitute care.

This order creates s. HSS 1.07 relating to parental support for children in court-ordered substitute care and makes related changes in ss. HSS 1.01 to 1.06. However, if a child in care has income or assets, the payment requirements will continue to be assessed according to s. HSS 1.03.

Publication Date: January 22, 1997
Effective Date: January 22, 1997
Expiration Date: June 21, 1997
Hearing Date: April 8, 1997
Extension Through: August, 19, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Health and Family Services

(Health, Chs. HSS 110--)

1. Rules adopted creating **ch. HFS 125**, relating to do-not-resuscitate bracelets to alert emergency health care personnel.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

A recent session law, 1995 Wis. Act 200, created ss. 154.17 to 154.29, Stats., relating to a do-not-resuscitate (DNR) order written by the attending physician for a patient who requests the order and who has a terminal condition or a medical condition such that, if the patient were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or would cause significant physical pain or harm that would outweigh the possibility of successful restoration of the function for an indefinite period of time. A DNR order directs emergency health care personnel not to attempt cardiopulmonary resuscitation on a patient for whom the order is issued if that person suffers cardiac or respiratory arrest. Emergency health care personnel will know if there is a do-not-resuscitate order in effect if the patient has on his or her wrist a do-not-resuscitate bracelet which has been affixed there by the patient's attending physician or at the direction of the patient's attending physician. Emergency health care personnel are expected to follow a do-not-resuscitate order unless the patient revokes the order, the bracelet appears to have been tampered with or the patient is known to be pregnant.

Section 154.19 (3) (a), Stats., created by Wis. Act 200, permits the Department to establish procedures by rule for emergency health care personnel to use in following do-not-resuscitate orders, and s. 154.27, Stats., as created by Wis. Act 200, requires the Department to establish by rule a uniform standard for the size, color and design of do-not-resuscitate bracelets.

These rules are being published by emergency order because while most Wis. Act 200 provisions have taken effect and do-not-resuscitate orders are being written for patients who are qualified, as defined in s. 154.17 (4), Stats., as created by Wis. Act 200, and request the order, without rules that establish a uniform standard for the bracelets the Department cannot approve bracelets. If the bracelet is not approved by the Department, it cannot be affixed. In the absence of a DNR bracelet on the wrist of a person in cardiac or respiratory arrest, emergency health care personnel ordinarily cannot know that a DNR order is in effect, and so must initiate cardiopulmonary resuscitation which in some cases will contravene a DNR order.

The rules establish a uniform standard for do-not-resuscitate bracelets and a procedure for emergency medical technicians (EMTs), first responders and emergency health care facility personnel to use in following do-not-resuscitate orders.

Publication Date: January 18, 1997
Effective Date: January 18, 1997
Expiration Date: June 17, 1997
Hearing Date: March 19, 1997
Extension Through: August 15, 1997

2. Rules adopted revising **ch. HSS 163**, relating to certification for lead abatement work and lead management activities.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage, and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, and the brain in particular, and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to have birth defects, mental retardation or behavioral disorders, or to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards in order to determine the appropriate method of hazard reduction or abatement, it is imperative that persons who provide lead hazard evaluation and other lead management services be properly trained to ensure accurate lead inspection or assessment results. A reliable lead inspection or assessment is necessary to ensure a lead-safe environment for building occupants, especially children under the age of six, who are the most vulnerable population affected by lead-based paint and lead-contaminated dust and soil.

Under s. 254.176, Stats., the Department may establish training and certification requirements for any person who performs or supervises lead hazard reduction or lead management. In addition, s. 254.178, Stats., states that no person may advertise or conduct a training course in lead hazard reduction or lead management that is represented as qualifying persons for state certification unless the course is accredited by the Department.

In 1993, the Department created ch. HSS 163, Wis. Adm. Code, Certification for Lead Abatement and Other Lead Hazard Reduction, to regulate the training and certification of lead abatement workers and supervisors and to accredit the corresponding training courses. Rules were needed to meet eligibility requirements for a \$6 million federal Department of Housing and Urban Development (HUD) grant to fund lead hazard reduction in low and moderate income housing where children under the age of six are found to have elevated blood lead levels.

Development of rules for training and certifying lead management professionals, including lead inspectors, risk assessors, and project designers, and for accrediting the corresponding courses, was postponed pending publication of U.S. Environmental Protection Agency (EPA) lead training and certification regulations. Initially expected in June 1994, these EPA regulations were not published until August 29, 1996.

Since most lead management work to date has been associated with elevated blood lead level investigations conducted by state and local government employees who received appropriate training from EPA regional lead training centers, the delay in lead management rules was not a health hazard. The creation of the private inspection and risk assessment service market resulting from new federal HUD/EPA disclosure regulations, however, poses a health hazard if that market is not properly regulated.

Joint HUD/EPA regulations (24 CFR Part 35 and 40 CFR Part 745) now require that landlords and home sellers disclose the known presence of lead in rental units and homes being sold. These regulations took effect September 6, 1996, for owners of more than four dwelling units and December 6, 1996, for owners of four or fewer dwelling units. In addition, a home buyer is allowed 10 days to obtain a lead inspection or risk assessment before final obligation to purchase a home under a signed offer to purchase.

Due to the lack of state-accredited training courses and state-certified lead management professionals to fill the demand, lead management services are being offered by persons who may not possess appropriate education, experience or training. Unqualified lead inspectors and risk assessors can have an adverse effect on the state's residential marketplace. Based on an inaccurate inspection, a mortgage company could deny a mortgage loan, a home sale could fall through, or a property owner could expend large sums of money for unnecessary lead abatement actions. Even worse, the health of children may be jeopardized by erroneous findings that a lead hazard is not present, which can result in improper handling of lead-based paint materials.

HUD recently announced it was awarding the State of Wisconsin and the City of Milwaukee additional lead hazard reduction grants totaling over \$6.5 million. The grants require that money be disbursed only for lead-based paint activities performed by state-certified persons who have completed state-accredited lead training courses. Since Wisconsin does not yet certify lead

inspectors, risk assessors, or project designers, grant mandates cannot be fully met, which could lead to funding difficulties and delay vital abatement activities.

This emergency order amends ch. HSS 163 to require accreditation of lead inspector, risk assessor and project designer training courses and, beginning April 19, 1997, certification of lead inspectors, risk assessors and project designers. In addition, references to "lead abatement or HUD-funded lead hazard reduction" have been changed to add lead management services. The order also adds accreditation and certification fees.

These rule changes are being published by emergency order to ensure, through Department certification and accreditation, that persons providing lead management services, including lead inspections, risk assessments and project design, are appropriately trained and qualified.

Publishing these rules as emergency rules also enables the State of Wisconsin and the City of Milwaukee to implement the federal grants which require that only trained and certified lead professionals perform lead hazard evaluations and lead hazard reduction and abatement.

Publication Date: February 18, 1997
Effective Date: February 18, 1997
Expiration Date: July 18, 1997
Hearing Date: March 18, 1997

EMERGENCY RULES NOW IN EFFECT (4)

Commissioner of Insurance

1. A rule adopted creating s. **Ins 3.46 (18)**, relating to the requirements for tax deductible long term care insurance.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The recently passed federal "Kassebaum-Kennedy" law, P.L. 104-191, set certain standards for allowing favorable tax treatment of long term care insurance policies. The existing Wisconsin administrative rules pertaining to long term care do not meet these criteria and require changes. These changes will allow tax deductible long term care insurance policies to be sold to Wisconsin residents as soon as possible.

Publication Date: December 20, 1996
Effective Date: January 1, 1997
Expiration Date: May 31, 1997
Hearing Date: February 19, 1997
Extension Through: July 29, 1997

2. Rule was adopted revising s. **Ins 18.07 (5) (bg)**, relating to an increase in 1997-98 premium rates for the health insurance risk-sharing plan.

Exemption From Finding of Emergency

Pursuant to s. 619.14 (5) (e) Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

Analysis Prepared by the Commissioner of Insurance

1996-97 Premium Adjustments

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk-Sharing Plan ("HIRSP") board, is

required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles and must be set at 60% of HIRSP's operating and administrative costs. This rule adjusts the premium rates for the period of July 1, 1997 to June 30, 1998 for persons entitled to a premium reduction under s. Ins 18.07 (5) (bg). The reduced premium rates are calculated by applying the percentages mandated by s. 619.165 (1) (b), Wis. Stats., to the rate that a standard risk would be charged under an individual policy providing substantially the same coverage and deductibles as provided under the plan. This adjustment represents an average 5.8% increase in premium payments over the most recent rates.

Publication Date: May 16, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997
Hearing Date: June 30, 1997

3. A rule was adopted repealing s. **Ins 3.46 (18) (d)**, relating to the requirements for tax deductible long term care insurance policies.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes would repeal the current requirement in the existing emergency rule which requires the offer of a non-tax qualified plan in each solicitation of a tax-qualified plan. After the public hearing on the permanent rule, it was determined that this requirement is no longer needed. The permanent rule was submitted to the legislature on May 30, 1997 with this provision deleted. This procedure to modify the emergency rule was presented to JCRAR at the hearing to extend the time period the emergency rule is effective.

Publication Date: June 13, 1997
Effective Date: June 13, 1997
Expiration Date: July 29, 1997

4. Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees calculation of adding certain physician specialties and UW hospital and clinics residents' fees.

Finding of Emergency

The deputy commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The deputy commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 97-71, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1997. The permanent rule was delayed pending legislative action on Senate Bill 145 which, if passed, will require a lowering of the fund fees originally proposed by the fund's board of governors. Senate Bill 145 may still reach the Senate floor this legislative session but, in all likelihood not before July 1, 1997, when this fee rule must be in effect. Assembly Bill 248, the Assembly bill which mirrors Senate Bill 145, passed the Assembly overwhelmingly.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 15, 1997. Because the provisions of this rule first apply on July 1, 1997, it is necessary to promulgate the rule on an emergency basis. A hearing

on the permanent rule, pursuant to the published notice was held on May 30, 1997.

Publication Date: June 20, 1997
Effective Date: June 20, 1997
Expiration Date: November 18, 1997

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Fish, Game, etc., Chs. NR 1---

Rule adopted creating s. **NR 27.07**, relating to notice of receipt of an application to incidentally take an endangered or threatened species.

Exemption From Finding of Emergency

1995 Wis. Act 296 establishes authority in the department of natural resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. Section 29.415 (6m) (e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

Publication Date: November 18, 1996
Effective Date: November 18, 1996
Expiration Date: See section 12m, 1996 Wis. Act 296
Hearing Date: January 14, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. Rules adopted revising **ch. PI 35**, relating to the Milwaukee private school choice program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

In his ruling, effective August 15, 1996, Judge Higginbotham prohibited the expansion of the Milwaukee private school choice program to religious private schools provided for under 1995 Wis. Act 27. On January 15, 1997, Judge Higginbotham determined that all other stipulations under the Act are allowed to continue until June 1997. At that time all of the provisions under the Act are suspended and the program reverts to previous statutory language.

Since the provisions under the Act (except for the participation of religious schools) are to be implemented for the remainder of the 1996-97 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and

financial audit requirements required of the participating private schools as provided for under the Act. The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Since the private school choice program has yet to be reviewed by the Court of Appeals and possibly the Supreme Court, only emergency rules will be promulgated at this time in order to implement the provisions under the Act through the end of the 1996-97 school year. Permanent rules will be developed when judicial review is finalized.

Publication Date: February 19, 1997
Effective Date: February 19, 1997
Expiration Date: July 19, 1997
Hearing Date: April 1, 1997

- Rules adopted revising **chs. PI 3** and **4**, relating to teacher certification requirements and certification program requirements.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare.

Proposed permanent rules were submitted to the Wisconsin Legislative Council on May 27, 1997. Most of the modifications made under the proposed permanent and emergency rules clarify, eliminate redundancy, and streamline current requirements to make the provisions under ch. PI 3 and 4 easier to read, understand, and implement. The rules also provide for consistency with other state agency licensure activity.

In order for teachers to apply for or renew specified licenses (license are issued July 1 through June 30) and for universities to have program requirements in place in time for the upcoming school year, rules must be in place as soon as possible.

Publication Date: July 1, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Department of Revenue

- Rules were adopted amending **s. Tax 11.05 (2)(s)** and revising **s. 11.86 (6)**, relating to sales and use tax treatment of landscaping services.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Sections Tax 11.05 (2)(s) and 11.86 (6), Stats., state that landscaping services (e.g., planting, mowing, and fertilizing grass) are only taxable when they are performed in developed areas. Similar services performed in undeveloped areas (e.g., along highways) were determined by the department to not be landscaping services and therefore, the sale of such services was not subject to sales or use tax.

In case of the *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue* (8/28/96 and 4/4/97, Docket#93-S-569), the Wisconsin Tax Appeals Commission held that there was no statutory basis for the distinction made by the department that certain services performed in developed areas were

landscaping while the same services performed in undeveloped areas were not landscaping.

It necessary to promulgate this rule order to remove any threat of estoppel arguments and revenue loss to the state as a result of information contained in these rules that implies planting, mowing, fertilizing, and similar services performed in undeveloped areas are not taxable.

Publication Date: May 18, 1997
Effective Date: May 18, 1997
Expiration Date: October 16, 1997

- Rules adopted repealing **ch. ATCP 53** and creating **ch. Tax 53**, relating to increasing plat preview fees to cover all of the current costs of activities and services provided by the department under ss. 70.27 and 236.12, Stats.

Finding of Emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

For the past three years, program costs have out paced revenues received. The Plat Review section has relied on their substantial cash balance to cover the difference. Projections indicate that cash reserves will be depleted within the next year or earlier. Without a plat review fee increase significant cutbacks in service to customers, the public, other state agency programs, and local units of government will be necessary. With such cut-backs state certified plats with saleable but not buildable lots could result. It should be noted that this program has not had a rate increase since 1985.

In order to address this problem, an administrative rule is in the process of being promulgated. Due to the complexities of where the Plat Review section physically resides (DATCP), who has program responsibility for it, combined with the 1996 Memorandum of Understanding between the Department of Revenue and the Department of Commerce, the administrative rule process has taken longer than anticipated and it is expected that the rule will not be completed for another 90 days.

In order to ensure that funding will be sufficient and that services to the citizens of this state remain uninterrupted, an emergency rule is necessary. In particular, this rule addresses the following needs:

- Ch. ATCP 53 is repealed.
- Ch. Tax 53 is created. Under this rule certain fees charged for plat review are increased.

Publication Date: June 1, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 1997
Hearing Date: July 11, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Transportation

Rules adopted revising **ch. Trans 300**, relating to school buses.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. The amendments are needed to assure that school bus operators can purchase school buses manufactured using the latest in construction technology and providing equal strength and safety. Currently, there are estimated to be 60 buses on order by operators. Without this emergency rule, these buses could not be used in Wisconsin when the school year begins in August 1997. Therefore, schools will start using alternative vehicles (production vans)

because of the unavailability of the smaller school buses built to the safer school bus standards.

Publication Date: July 1, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997
Hearing Date: August 26, 1997
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Veterans Affairs

Rule adopted creating s. VA 2.01 (2)(b)18., relating to the health care aid grant program.

Finding of Emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2)(b)2., Wis. Adm. Code, the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap.

The treatment plans typically encompass the removal of teeth with a resulting need for dentures. Failure to promptly provide denture could have a negative impact upon an individual's health. It is therefore necessary to assure that the Department has sufficient authority to pay for the dentures included in treatment plans already received during this fiscal year. The emergency rule cap will accomplish this goal.

Publication Date: April 7, 1997
Effective Date: April 7, 1997
Expiration Date: September 5, 1997
Hearing Date: April 18, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development

(Economic Support, Chs. DWD 11-59)

1. Rules adopted renumbering **subch. VII of ch. HSS 55** and creating s. **DWD 56.08**, relating to the administration of child care funds and required parent copayments.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Governor has directed the Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin Works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. The Governor has approved a new schedule for child care copayments

and this rule places the new schedule into operation. The use of an emergency rule allows the implementation of the new schedule immediately.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997
Extension Through: July 27, 1997

2. Rules were adopted creating **ch. DWD 12**, relating to Wisconsin Works program.

Exemption From Finding of Emergency

The Legislature in s.275(3) of 1995 Wis. Act 289 permitted the Department to promulgate the rules required under ss. 49.143 to 49.157, Stats., as created by Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency.

Analysis Prepared by the Department of Workforce Development

Wisconsin Works (W-2), the replacement program for the Aid to Families with Dependent Children (AFDC) program, is based squarely on work. Rather than offering welfare checks to those who do not work, as AFDC does currently, W-2 offers participants the opportunity to move into the work world and become self-sufficient through employment.

These rules provide the administrative framework under which the Department will implement a W-2 pilot program in two counties, Fond du Lac and Pierce, effective March 1, 1997. As the pilot counties for the Work Not Welfare program which began January 1, 1995, these two counties have had experience in implementing major welfare reform efforts. The W-2 program includes work opportunities, job access loans, education and training activities to enhance employability, intensive case management, child care and child support enforcement and other employment supports such as transportation assistance and access to health care services under the Medical Assistance program.

Wisconsin Works (W-2) was authorized through enactment of 1995 Wis. Act 289 which Governor Thompson signed into law on April 25, 1996. Under s.49.141(2)(b), Stats., if a federal waiver is granted or federal legislation is enacted, the Department of Workforce Development could begin to implement W-2 no sooner than July 1, 1996 and must fully implement the W-2 program statewide in September 1997. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which ends the entitlement program under Title IV-A of the Social Security Act and creates a block grant program under which states receive monies to provide cash and other benefits to help needy families support their children while at the same time requiring families to participate in work program activities which will help them become self-sufficient. In general, a state may not use any part of the TANF grant to provide assistance to a family for more than 60 months.

States must ensure, under section 114 of P.L. 104-193, that families who meet the AFDC eligibility requirements in effect on July 16, 1996, have access to Medical Assistance. Wisconsin has not yet obtained the necessary waivers or federal legislation that would allow the implementation of the W-2 health plan. Therefore, W-2 participants who meet the July 16, 1996, AFDC eligibility requirements or are eligible under s.49.46 or 49.47, Stats., and the implementing administrative rules, Chs. HFS 101-108, administered by the Department of Health and Family Services, may apply and be determined eligible for Medical Assistance.

Under W-2, there will be a place for everyone who is willing to work to their ability. The program is available to parents with minor children, low assets and low income who need assistance in becoming self-sufficient through employment. The W-2 program provides cash benefits only for those individuals who participate in W-2 employment and training activities. W-2 agencies have the

option, for participants in a community service job or a transitional placement, to aggregate education and training hours for approved programs to allow an individual to participate in education and training activities for more than 10 or 12 hours per week within the first few months of participation. Each eligible W-2 applicant will meet with a Financial and Employment Planner (FEP) who will help the individual develop a self-sufficiency plan and determine their place on the W-2 employment ladder. The ladder consists of four levels of employment options, in order of preference: unsubsidized employment; subsidized employment through a trial job for those participants who need minimal assistance but where unsubsidized employment is not available; a community service job for those participants who need to practice work habits and skills necessary to move into unsubsidized employment; and transitional placement for those unable to perform independent, self-sustaining work. Individuals placed in a trial job will receive wages from an employer. Individuals placed in a community service job will receive a monthly benefit of \$555 and individuals placed in a transitional placement will receive a monthly benefit of \$518. W-2 participants are limited to 24 months in a single subsidized employment position category. Extensions may be granted on a limited basis when local labor market conditions preclude opportunities or when the participant has significant barriers which prevent him or her from obtaining unsubsidized employment. Child care is available for those individuals who have children under the age of 13 and need child care in order to work or participate in a W-2 employment position. The W-2 program will be administered by contracted agencies which may include counties, tribal agencies and private agencies in geographic areas determined by the Department.

These are the rules for implementation of the Wisconsin Works program. The rules include eligibility requirements for those individuals applying for a W-2 employment position or child care, time-limited benefits for participants in W-2 employment positions, good cause for failure or refusal to participate in W-2 employment positions or other required employment and training activities, how sanctions are applied for failure to meet the W-2 employment position participation requirements, and school attendance requirements under the Learnfare program for the children of W-2 employment position participants.

Publication Date: March 1, 1997
Effective Date: March 1, 1997
Expiration Date: July 29, 1997
Hearing Dates: May 21 & 28, 1997

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Labor Standards, Chs. DWD 270-279)

Rules were adopted revising **ch. DWD 272**, relating to the minimum wage.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

In addition to raising the minimum wage to \$4.75 per hour on October 1, 1996, and \$5.15 per hour on September 1, 1997, the federal Fair Labor Standards Act provides for an "opportunity wage" of \$4.25 per hour which may be paid by each new employer to a person under the age of 20 during the first 90 days of employment. The Department's permanent rules to raise the state minimum wage contained provisions creating an opportunity wage that are the same as those of the federal law.

On April 10, 1997, the State Senate Committee on Labor, Transportation and Financial Institutions suspended the portions of **CR 96-181** relating to the opportunity wage. The Department proceeded with formal adoption of the provisions of the rule that were not suspended; the permanent rule changes will become effective on June 1, 1997. On April 17, 1997, the Joint Committee for Review of Administrative Rules (JCRAR) unanimously approved extension of the Department's emergency rule on minimum wage, which includes the provisions on the opportunity wage. The emergency rule extension lasts until June 27, 1997.

The respective votes of the two Legislative committees have caused uncertainty as to whether the provisions relating to the opportunity wage remain in effect through June 27, 1997, or expire on June 1, 1997. The JCRAR has met several times since the standing committee's suspension but its only action on this issue was to extend the emergency rule, which includes the opportunity wage provision. The legal interpretation from the Legislative Council as to the precedence of the emergency rule provision vs. the permanent rule provision has not been definitive.

It appears that the JCRAR will vote in June on the standing committee suspension of the opportunity wage provisions of the permanent rule. If the JCRAR does not concur in the standing committee's suspension, the Department will proceed to promulgate the opportunity wage provisions on a permanent basis. However, due to timelines required for promulgation of permanent rules, this provision would not likely take effect permanently until September 1, 1997. Thus, the delays in action coupled with interpretive uncertainty could result in a regulatory gap that would cause confusion amongst the state's employees and employers over the provisions in effect after June 1, 1997. The Department believes that such uncertainty throughout the state would be undesirable.

In absence of definitive legal opinion or action on the opportunity wage issue by the JCRAR, this emergency rule alleviates uncertainty as to whether the opportunity wage provisions are effective after June 1 by explicitly maintaining their effect. The Department will make every reasonable effort to comply with the JCRAR's intent once action is taken. If the JCRAR affirms the standing committee's suspension, the Department will immediately withdraw the provisions of this emergency rule. If the JCRAR does not affirm the standing committee's suspension, this emergency rule will prevent a gap in coverage of the opportunity wage between the date of JCRAR action in June and the effective date of permanent provisions on the opportunity wage.

This emergency rule also contains a provision that prohibits the displacement of an employee that occurs solely for the purpose of hiring an opportunity employee. This language is similar to a provision of the federal law and was included by the Department because the Senate Committee on Labor, Transportation and Financial Institutions asked that the state rule also contain this provision. This language was originally submitted to the Senate Labor, Transportation and Financial Institutions Committee as a germane modification to CR-96-181 on March 31, 1997. It was the Department's intent to promulgate this provision as part of the permanent rule. However, this provision was inadvertently omitted from the final draft.

Publication Date: May 31, 1997
Effective Date: May 31, 1997
Expiration Date: October 29, 1997

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Wage Rates, Chs. ILHR 290-294)

Rules adopted revising **ch. ILHR 290**, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

On December 11, 1996, this Department adopted an emergency rule and began permanent rulemaking to amend the former ch. ILHR 290, Wis. Adm. Code, in accordance with 1995 Act 215, which

enacted changes in the laws governing the determination of prevailing wage rates for state and local public works projects. Among the provisions of that emergency rule was a section on the classification of subjourneypersons.

The initial emergency rule will expire on May 10, 1997. The Department has developed a different provision on subjourneypersons which it is submitting for legislative committee review as a part of the permanent rule in its proposed final draft stage. In the meantime, it is necessary to have a formal policy on subjourneypersons in effect so that the Department may continue to issue wage determinations on state and local public works projects without causing the projects to be delayed. Therefore, the Department is adopting the new subjourneyperson policy, and related procedural provisions, as an emergency rule.

Publication Date: May 10, 1997
Effective Date: May 10, 1997
Expiration Date: October 8, 1997
Hearing Date: June 19, 1997

STATEMENTS OF SCOPE OF PROPOSED RULES

Commerce

Subject:

Chs. ILHR 50 to 64 and 66 – Rules relating to uniform multifamily dwellings.

Description of policy issues:

Part 1. Description of the objective of the rule:

Section 101.973 (2), Stats., requires the Department to biennially review the Uniform Multifamily Dwellings Code, ch. ILHR 66. It is anticipated that the review of the Code will identify potential code revisions necessary to:

- Address code requirement clarity problems that have been discovered since the implementation of the Code on April 1, 1995;
- Reflect new construction practices, products, standards, or materials, including fire prevention, fire containment, fire detection, fire suppression, and fire alarm systems;
- Address risks relative to safety, health, and welfare that have been brought to light since the implementation of the Code on April 1, 1995; and
- Clarify standards for fulfilling the objective of protecting public safety, health, and welfare.

Part 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Currently, the Multifamily Code, ch. ILHR 66, in conjunction with the Commercial Building Code, chs. ILHR 50–64, establishes statewide uniform construction and inspection standards for multifamily dwellings, which include buildings containing 3 or more dwelling units and not exceeding 60 feet in height or 6 stories. The construction standards of the Code address such issues as:

- Life/safety concerns, including exiting in fire situations;
- Fire fuel contribution relative to a building’s class of construction and contents; and
- Structural capabilities and integrity, including those under fire conditions.

It is anticipated that the review will result in code revisions at least clarifying fire separations and fire construction standards. Without these revisions, the Department believes that the present code clarity problems may leave designers and builders unsure in how to comply with the Code, and cause the Department and local inspectors to be uncertain in how to administer and enforce the code. This statement of scope may also result in developing one or more rulemaking proposals to address the above–mentioned issues.

Statutory authority for the rule:

Section 101.14 (4) (a) – Requires the Department to make rules requiring owners of places of employment and public buildings to install such fire detection, prevention, or suppression devices as to protect the safety, health, and welfare of the occupants.

Section 101.973 (1) – Requires the Department to promulgate rules that establish standards for construction of multifamily dwellings and their components.

Section 101.973 (2) Requires the Department to biennially review the rules adopted under sub. (1).

Section 101.974 (4) – Authorizes the Department to promulgate rules prescribing procedures for approving new building materials, methods, and equipment.

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

The following is the estimated work time that staff will be involved in these code change issues:

Advisory council meetings –	= 150 hr.
(Average of 50 hr. x 3 meetings)	
Code topics research, language drafts –	= 120 hr.
Hearings, responses, revisions, etc. –	= 120 hr.
<u>Environmental assessment –</u>	<u>= 80 hr.</u>
Total	= 450 hr.

Commerce

Subject:

Ch. Comm 67 – Relating to rental weatherization.

Description of policy issues:

Part 1. Description of the objective of the rule:

The Rental Weatherization Code establishes minimum energy efficiency standards for residential rental units that have to be met before ownership of a property can be transferred.

Part 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Section 101.122 (2) (e), Stats., requires the Department to review and update ch. Comm 67 at least every five years. The code was last updated in December, 1992. This code change is targeted for implementation in late 1997.

The following issues were identified by the Department and its customers to be in need of review and clarification so as to facilitate application of the rules by property managers and owners, real estate agents and inspectors.

1. In order that the rule may be better communicated, definitions need to be added or clarified.
2. Acceptance of nationally recognized energy–related product standards and methodologies need to be incorporated into the rules.
3. Administrative policies and procedures need to be reviewed for clarity and appropriateness.

The alternative of not reviewing or updating ch. Comm 67 is contrary to state law.

Statutory authority for the rule:

95–96 Wis. Stats.:

Section 101.122 – Establishes statewide standards for Rental Unit energy efficiency.

Section 101.122 (2) – Requires Department to establish standards for construction and certification of inspectors.

Section 101.122 (2) (e) – Requires Department to review rules at least once every 5 years.

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

The following is the estimated work time that staff will be involved in these code change issues.

Advisory council meetings –	= 150 hr.
(Average of 50 hr. x 3 meetings)	
Code topics research, language drafts –	= 120 hr.
Hearings, responses, revisions, etc. –	= 120 hr.
<u>Environmental assessment –</u>	<u>= 80 hr.</u>
Total	= 450 hr.

Natural Resources

Subject:

S. NR 20.13 – Relating to prohibiting the placement of permanent ice shelters on the Fox River in Brown County from the DePere dam downstream to its mouth at the bay of Green Bay.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

The purpose is to eliminate ice fishing shelters from falling into the water and obstructing boat navigation. Brown County Sheriff, DePere Police Department and the Green Bay Area Great Lakes Sport Fisherman's club already support the idea.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

The Fox River is classified as Outlying Waters and current law requires ice fishing shelters to be removed March 15th. Over the past three years, over a dozen shelters have fallen through the ice, due to rapidly changing ice conditions due to current. This is a serious hazard to boaters on the Fox River.

Statutory authority for the rule:

SS. 29.283 and 227.11, Stats.:

Anticipated time commitment:

The anticipated time commitment is 4 hours and 45 minutes. One public hearing will be held in DePere, Wisconsin, and will be scheduled at a later date.

Regulation & Licensing

Subject:

RL Code – Relating to requirements for reporting convictions by credential holders.

Description of policy issues:

Objective of the rule:

To create uniform rules to require the reporting of any convictions to the Department by all credential holders.

Policy analysis:

Currently, the provision for credential holders to notify the Department of any convictions is not uniform with all of the different credentialing authorities housed in the Department. This rule-making would standardize the provision for the reporting of convictions for all credential holders.

Statutory authority:

Sections 227.11 (2) and 440.03, Stats.

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

20 hours.

Transportation

Subject:

Ch. Trans 302 – Relating to vehicle marking.

Description of policy issues:

Description of the objective of the rule:

This proposal will amend ch. Trans 302, relating to vehicle marking, to remove obsolete definitions and regulations, and incorporate current requirements for marking of vehicles to be in compliance with federal regulations. Since deregulation, many of the terms and requirements are no longer relevant and cause confusion among the industry. Amendment to this rule will clear the confusion and reflect current federal regulations.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

The current rule contains terminology and requirements which are obsolete since deregulation. The Department proposes a change to the current rule to eliminate requirements which are no longer in effect and reduce confusion to the vehicle marking regulations. The change would also include current requirements under federal regulations.

Statutory authority for the rule:

Sections 85.16 (1), 194.09 and 348.185, Stats.

Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

It is estimated that state employees will spend 50 hours on the rulemaking process, including research, drafting and conducting public hearings.

Transportation

Subject:

Ch. Trans 276 – Relating to adding several highway segments to the network of highways on which long combination vehicles may operate.

Description of policy issues:

Description of the objective of the rule:

This proposal will amend ch. Trans 276, a rule of the Department of Transportation which establishes a network of highways on which long combination vehicles may operate, by adding several highway segments to the network. The actual highway segments being proposed are STH 64 from STH 13 in Medford to USH 45 in Antigo, STH 81 from STH 78 in Argyle to STH 11 in Monroe, STH 78 from STH 11 in Gratiot to its crossing of the Pecatonica River south of Wiota, STH 48 from STH 63 in Cumberland to USH 53 in Rice Lake, STH 47 from USH 51 in Woodruff to USH 8 in Rhinelander, STH 70 from STH 13 in Fifield to USH 2 in Florence, STH 77 from USH 63 in Hayward to USH 51 in Hurley, STH 97 from STH 29 south of Athens to STH 64 east of Medford, STH 107 from STH 29 north of Marathon City to STH 64 west of Merrill, STH 111 from USH 8 east of Catawba to STH 13 south of Phillips, STH 112 from STH 13 north of Marengo to USH 2 in Ashland, STH 118 from USH 63 east of Benoit to STH 112 south of Ashland, STH 153 from USH 51 in Mosinee to STH 107 east of Halder, STH 35 from STH 64 in Somerset to USH 8 in St. Croix Falls and STH 64 from STH 35 in Somerset to STH 65 in New Richmond.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Federal law requires the Department to react within 90 days to requests for additions to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received several requests for long truck routes, and is combining them into one proposal.

Statutory authority for the rule:

Sections 348.07 (4), Stats.

Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

It is estimated that state employees will spend 80 hours on the rulemaking process, including research, drafting and conducting public hearings.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Corrections

Rule Submittal Date

Notice is hereby given that, pursuant to s. 227.14 (4m), Stats., on June 26, 1997, the Department of Corrections submitted proposed ch. DOC 304 to the Wisconsin Legislative Council Staff.

Analysis

The subject matter of the proposed ch. DOC 304 relates to secure work crews for inmates.

Agency Procedure for Promulgation

A public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The organizational unit that is primarily responsible for promulgation of the rule is the Division of Adult Institutions.

Contact Person

Deborah Rychlowski
Telephone (608) 266-8426

Corrections

Rule Submittal Date

Notice is hereby given that, pursuant to s. 227.14 (4m), Stats., on June 20, 1997, the Department of Corrections submitted proposed ch. DOC 326 to the Wisconsin Legislative Council Staff.

Analysis

The subject matter of the proposed ch. DOC 326 relates to sex offender registration and community notification.

Reason for rules, intended effects, requirements:

The Wisconsin Legislature's passage of Act 440 transferred responsibility for the Wisconsin Sex Offender Registry to the Department of Corrections and mandated new categories of offenders that are required to register and update personal information.

This rule specifies who must register and what procedures govern the registration process. This rule specifies what information must be provided, the duration of the registration requirement, how the registry will be maintained, and when offenders will be notified of the registration obligation.

This rule mandates that, when specific criteria are met, the agency with jurisdiction shall provide law enforcement with special bulletins when an offender is released from confinement or enters the intensive sanction program or the community residential confinement program.

This rule requires that law enforcement, community entities, victims, and the general public be granted access to selected registry information. This rule provides that the general public may also be granted access to the registry when offender-identifying information is provided.

Agency Procedure for Promulgation

A public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The organizational unit that is primarily responsible for promulgation of the rule is the Office of Offender Programs.

Contact Person

Robert Pultz
Office of Legal Counsel
Telephone (608) 267-0922

Revenue

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., on June 25, 1997, the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order amends s. Tax 11.15, relating to sales and use tax treatment of containers and other shipping and packaging materials.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for promulgation of the rule order.

Contact Person

If you have questions regarding this rule, you may contact:

Mark Wipperfurth
Income, Sales, and Excise Tax Division
Telephone (608) 266-8253

Revenue

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on June 30, 1997 the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order Chapter Tax 19 relates to the repealing of ss. Tax 19.03 (1) (a), (d), (e), (g), and (h), Tax 19.03 (2) (b), Tax 19.04 (3) (a), and Tax 19.04 (4); and to the amending of Chapter Tax 19 (title), ss. Tax 19.01, Tax 19.03 (1) (b), (c), (k), and (L), Tax 19.03 (2) (intro.), (a), and (c), Tax 19.03 (3), Tax 19.03(4) (intro.) and (a), Tax 19.04(title), Tax 19.04(1), Tax 19.04(2), Tax 19.04 (3) (b) and (c), Tax 19.05 (1) (b), and Tax 19.05 (2); and the creation of ss. Tax 19.03 (1) (am) and Tax 19.03 (4) (d), both of the above items relating to tax rate disparity payments.

These items deal with renaming the tax rate disparity program the expenditure restraint program and other changes which have been legislatively made. These proposed rule changes will update existing rules to match numerous statutory changes made to the expenditure restraint program since 1991.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

Contact Person

If you have questions regarding this rule, you may contact:

Wallace T. Tews, Assistant Administrator
Division of State and Local Finance
Telephone (608) 266-9759

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

► (Reprinted from June 30, 1997 *Wis. Adm. Register*)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on the proposed amendments to ch. ATCP 42, Wis. Adm. Code, relating to commercial feed.

Hearing Information

The hearings will be held at the times and places shown below. Three hearings are scheduled:

July 29, 1997 Tuesday 1:00 p.m. to 4:00 p.m.	Quality Inn 809 West Clairmont Ave. EAU CLAIRE, WI
July 30, 1997 Wednesday 1:00 p.m. to 4:00 p.m.	Ramada Inn 200 North Perkins St. APPLETON, WI
July 31, 1997 Thursday 1:00 p.m. to 4:00 p.m.	Board Room WDATCP 2811 Agriculture Dr. MADISON, WI

Written Comments

The public is invited to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **August 15, 1997** for additional written comments.

Copies of Rule

A copy of this rule may be obtained, free of charge, from:

Agricultural Resource Management Division
Telephone (608) 224-4539
Wis. Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

Copies will also be available at the public hearings.

An interpreter for the hearing-impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **July 18, 1997** either by writing to Kristina Gordon, 2811 Agriculture Drive, Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4537 or by contacting the message relay system (TTY) at (608) 224-5058. Handicap access is available at the hearings.

Analysis by the Dept. of Agriculture, Trade & Consumer Protection

This rule amends the Department's current rules related to commercial feed under ch. ATCP 42, Wis. Adm. Code.

Commercial Feed Labeling; General:

The current rules establish specific labeling requirements for commercial feed, including label contents and format. Under the current rules, commercial feed other than "custom-mixed feed" and dog and cat food must be labeled with all of the following information:

- The product name.
- Drug information if the feed contains any drug.

- A statement of purpose.
- A guaranteed analysis.
- An ingredient statement.
- Use directions and precautionary statements, if required.
- The name and address of the manufacturer or distributor.
- A declaration of net quantity.

"Custom-Mixed Feed":

The current rules spell out different and less rigorous labeling requirements for "custom-mixed feed." Under the current rules, a "custom-mixed feed" is a commercial feed which a manufacturer prepares at the request of a retail purchaser according to a formula provided by the retail purchaser. This rule expands the definition of "custom-mixed feed" so that it also includes commercial feed made from ingredients provided, in significant part, by the retail purchaser.

"Mill Formulated Feed":

Under the current rules, a "mill formulated feed" means a commercial feed manufactured, on an individual basis, according to a formula provided by the feed manufacturer or labeler for the customer of that feed manufacturer or labeler. A "labeler" includes a person, other than the final retail purchaser, who retains proprietary rights to the feed formula.

Under the current rules, "mill formulated" feed must comply with general feed labeling requirements, and may not be labeled according to the less rigorous labeling standards for "custom-mixed" feed. Under this rule, a "mill formulated" feed may be labeled in the same manner as a "custom-mixed" feed unless the purchaser requests otherwise.

Bulk Feed Labeling:

Under current rules, packaged commercial feed must be labeled on the feed package. If commercial feed is sold in bulk rather than packaged form, label information may be provided on a delivery slip that accompanies the bulk delivery. This rule clarifies that when bulk deliveries of commercial feed are bagged at retail at the request of the purchaser, label information need not appear on the individual bags if each bag is clearly identified as part of a bulk delivery for which a bulk delivery slip is provided. If the bulk commercial feed contains one or more drug, the identification on each bag shall include the word "medicated."

Fiscal Estimate

State government:

The rule will be administered by the Agricultural Resource Management Division of the Department of Agriculture, Trade and Consumer Protection. The Department anticipates no fiscal effect on state or local governments.

The proposed rule requires labeling changes which will require review of new labels by Department staff; however, labels are already reviewed periodically.

Initial Regulatory Flexibility Analysis

(See pages 16-17 of the June 30, 1997 *Wis. Adm. Register*.)

Notice of Hearing

Commerce

*(Fee Schedule, Ch. Comm 2
Credentials, Ch. Comm 5
Elevators, Ch. Comm 18)*

Notice is given pursuant to ss. 101.02, 101.12 and 101.17, Stats., the Department of Commerce proposes to hold a public hearing to consider the revision of chs. Comm 2, 5 and 18, Wis. Adm. Code, relating to inspection of elevator's and mechanical lifting devices.

Hearing Information

July 29, 1997
Tuesday
10:00 a.m.

Madison
Room 103 Conf. Room
GEF #1, State Office Bldg.
201 E. Washington Ave.

A copy of the rules to be considered may be obtained from the Department of Commerce, Division of Safety and Buildings, P.O. Box 7969, Madison, Wisconsin 53707, by calling Margaret Slusser at (608) 261-6546/voice or (608) 264-8777/TTY, or at the appointed times and places the hearings are held.

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than **August 15, 1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Diane Meredith at the address noted above. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call Diane Meredith at (608) 266-8982/voice or (608) 264-8777/TTY at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis of Proposed Rules

Statutory Authority: ss. 101.02, 101.12 and 101.17

Statutes Interpreted: ss. 101.02, 101.12 and 101.17

The purpose of chapter Comm 18, Elevator Code, is to protect the safety of the general public and employes using elevators and other mechanical lifting devices in public buildings and places of employment.

The following proposed changes are necessary to ensure that elevators and mechanical lifting devices are installed in accordance with the elevator code and are safe for people to use.

1. Amend chapters Comm 5, Credentials Code, and Comm 18, Elevator Code, to allow a person with proof of certification as an American Society of Mechanical Engineers (ASME) Qualified Elevator Inspector.

2. Amend fees as specified in chapter Comm 2, Fee Schedule, to match Department expenses. Plan review fees and certificate of operation fees specified in chapter Comm 2 will be reduced. Inspection fees will be raised.

Due to the increased number of elevators and mechanical lifting devices installed in new construction, the Department has not been able to keep up with all of its required inspections. To ensure that the citizens of Wisconsin are safe when using elevators and other mechanical lifting devices, the Department is adopting these rules as permanent rules to replace the emergency rules which took effect on June 1, 1997.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter ILHR 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual

conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Small architectural, engineering and small elevator manufacturing and supply firms will be affected by the proposed rules. If a small business operator is remodeling or altering an existing building or constructing a new building with an elevator or other mechanical lifting device, the elevator and mechanical lifting device will be inspected in accordance with the proposed rules.

Small elevator inspection firms may be affected by these rules, if they contract with the Department to perform elevator inspections.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

Individuals who perform elevator inspections for the Department must follow Department procedures for completing and filing of the inspection reports and invoicing for work performed.

3. Types of professional skills necessary for compliance with the rules.

Individuals who will perform the inspections must be certified by the Department. An owner of a small business will not require any special skills.

Fiscal Estimate

The Division of Safety and Buildings has a backlog in elevator inspections of 7,490. New elevators continue to be installed at the rate of about 600 per year. Inspecting a new elevator takes from two to three times longer than an annual inspection. Assuming that 1.0 FTE inspector can manage about 900 elevators and few elevators are decommissioned, the additional units translate into an 0.67 FTE workload increase annually. Due to the increased complexity of elevator installations, the elevator inspection staff have been spending much of their time inspecting new elevators, while not conducting annual inspections, which results in a greater backlog. There are approximately 13,500 elevators that are required to be inspected annually. In FY '96, 6,000 elevators were inspected. The number of elevators inspected in FY '96 was low due to the extended illness of an employe and two unfilled vacancies.

The Division currently has 80 inspectors and 11 staff people providing support functions for its various inspection programs. The Department proposes to increase its fees to fund 7 additional inspectors to perform annual elevator inspections and 1 additional program support position. The projected annual cost for the 8 additional FTEs will be \$538,100.

The elevator inspection revenue for FY '96 was \$352,500 for 9 FTE elevator inspector positions. With the proposed changes, the projected revenue for 16 FTE elevator inspector positions and the additional program support position will be \$872,700, an increase of \$520,200 over FY '96.

Notice of Hearing

Commerce

Notice is given that pursuant to ss. 101.02 (15), 101.12 (1) (c), and ch. 145, Stats., the Department of Commerce proposes to hold a public hearing to consider the revision of chs. Comm 18 and 82 and ILHR 50, 51 and 55, Wis. Adm. Code, relating to elevators and mechanical lifting devices.

Hearing Information

The hearing is scheduled as follows:

August 14, 1997
Thursday
10:00 a.m.

Room 103, Conference Rm.
GEF #1 State Office Bldg.
201 E. Washington Ave.
MADISON, WI

Copies of Rules

A copy of the rules to be considered may be obtained from:

Division of Safety and Buildings
Dept. of Commerce
201 E. Washington Ave.
P.O. Box 7969
Madison, WI 53707

Copies may also be obtained by calling (608) 261-6546/voice or (608) 264-8777/TTY or at the appointed time and place the hearing is held.

Written Comments

Interested people are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **August 29, 1997** for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Diane Meredith at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-8982/voice or (608) 264-8777/TTY at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Agency Analysis of Rules

Statutory authority: ss. 101.02, 101.12, 101.13, 101.17 and 145.02

Statutes interpreted: ss. 101.12, 101.13, 101.17 and 145.02

Various code sections within chs. Comm 18 and 82 and chs. ILHR 50-64, relating to elevators and mechanical lifting devices, are being modified.

The purpose of the changes is to improve clarity, eliminate duplicative rules in ch. Comm 18 and cross-reference the appropriate chapters. The following is a summary of the major changes being considered for these chapters:

1. Adopt by reference the National Fire Protection Association (NFPA), National Fire Alarm Code, NFPA 72-1993. [Comm 18.14]

2. Eliminate the requirement that all elevator shafts and machine rooms be constructed of 2-hour fire-resistive material. The fire-resistive ratings specified in s. ILHR 51.03-A, Classes of construction fire resistive ratings in hours, will be used as the minimum ratings for elevator shafts. A sign will be required to identify the entrance to the machine room. [Comm 18.20, ILHR 51.02 (22) 5., ILHR 51.03-A and ILHR 55.20]

3. Require sprinklers in elevator shafts to be installed in accordance with NFPA 13 and require heat or smoke detectors in elevators to be installed in accordance with NFPA 72-1993. This change will simplify and make the installation of sprinklers in elevator shafts and machine rooms consistent with current national standards. [Comm 18.21, ILHR 51.23 (3), ILHR 51.24, intro. par. and ILHR 51.245 (1)]

4. Eliminate the requirement for a drain in the pit of sprinklered elevators. The proposed rules will permit drains or sumps to be installed in elevator pits. However, sumps may not be installed in the elevator machine room. The elevator machine rooms are insufficient in size to provide the necessary clearances for all equipment, especially the electrical equipment. These changes were made to create a safe working environment. [Comm 18.21, Comm 18.23, Comm 82.33 (9) (f) and Comm 82.36 (11) (a) 2. and 5.]

5. Clarify that fire fighters' service is not required on elevators that travel less than 6 feet 8 inches and where the hoistway does not penetrate a floor. [Comm 18.31]

6. Clarify the door operation requirements for residential elevators and vertical wheelchair platform lifts. Depending on how a person enters and exits the units, maneuverability space for manually-opening doors must comply with ch. ILHR 69, ADAAG 4.13. [Comm 18.69 (2) (a)]

7. Clarify accessibility requirement by cross-referencing ch. ILHR 69. [Comm 18.09 (2), Comm 18.71, Comm 18.85 and ILHR 50.12 (4) (dm)]

8. Modify the handrail requirements for elevators and wheelchair platform lifts to permit other shapes of handrails besides round. The handrails must still be installed with a clearance between the rail and the wall of 1 1/2 inches. [Comm 18.70 (4) (b)]

9. Modify the handrail requirements in the Commercial Building Code to be consistent with the model code requirements. [ILHR 51.161 (7)]

10. Eliminate the additional requirements for handgrips in inclined wheelchair platform lifts. The requirements in the adopted ASME A17.1 will be used. [Comm 18.77 (3)]

11. Clarify that attendant operation is prohibited in Wisconsin. [Comm 18.74 (2)]

12. Clarify plan submittal requirements for elevators and other mechanical lifting equipment. [Comm 18.09 (3) and 50.12 (4) (dm)]

13. Modify sections in the plumbing code to be consistent with the elevator code relative to drains and sumps in elevator pits. [Comm 82.33 (9) (f) and 86.36 (11) (a) 2. and 5.]

14. Require the drains and sumps located in the elevator hoistway pit to accept only clearwater and storm water waste from the elevator hoistway pit. [Comm 82.36 (9) (f)]

Fiscal Estimate

Existing rules are being modified to clarify certain requirements, eliminate duplicative rules and adopt by reference the national fire alarm code and ASME A17.1, Part XXV, relating to limited-use, limited-access elevators. These changes will not create a fiscal impact.

Initial Regulatory Flexibility Analysis

Types of small businesses that will be affected by the rules:

Small architectural, engineering and plumbing firms and small elevator manufacturing and supply firms will be affected by the proposed rules. If a small business operator is remodeling or altering an existing building or constructing a new building, the remodeling, alteration and new construction must comply with the proposed rules.

Reporting, bookkeeping and other procedures required for compliance with the rules:

No reporting or bookkeeping procedures are required for compliance.

Types of professional skills necessary for compliance with the rules:

None known.

Notice of Hearings

Commerce

**(Fee Schedule, Ch. Comm 2
Uniform Dwellings, Chs. ILHR 20-25
Building & Heating, etc., Chs. ILHR
50-64
Multi-family Dwellings, Ch. ILHR 66
Plumbing, Chs. Comm 82-87
Sanitation, Ch. Comm 91)**

Notice is given that pursuant to ss. 101.02 (1), 101.63 (1), 101.73 (1), 101.973 (1) and 145.02 (3) and (4), Stats., the Department of Commerce proposes to hold public hearings to consider the adoption

of rules under chs. Comm 2, ILHR 20–25, 50–64, 66, Comm 81–85, and 91, Wis. Adm. Code, relating to private onsite wastewater treatment systems and sanitation.

Hearing Information

August 6, 1997
Wednesday
9:30 a.m. – noon

Rice Lake
WI Indianhead Technical College
Rms. 241, 243, 245
1900 College Avenue

August 8, 1997
Friday
9:30 a.m. – noon

Green Bay
Comfort Suites
1951 Bond Street

August 19, 1997
Tuesday
9:30 a.m. – noon

Madison
Bascom Room
Best Western Innowner
2424 University Avenue

Note: A draft environmental impact statement has been prepared on the hearing draft of the proposed ch. Comm 83 and related rules. A public hearing on the draft environmental impact statement will be held on **Tuesday, August 19, 1997 in Madison at the Best Western Innowner starting at 1:00 p.m.** The public hearings for the proposed ch. Comm 83 rules on **August 6th and 8th will be followed, starting at 1:00 p.m.**, an opportunity to review the draft environmental impact statement.

A copy of the rules to be considered may be obtained from the Department of Commerce, Division of Safety and Buildings, P.O. Box 7969, Madison, Wisconsin 53707, by calling (608) 261–6546 or Telecommunication Device for the Deaf (TDD) at (608) 264–8777 or at the appointed times and places the hearings are held.

Written Comments

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than **September 2, 1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted James Quast at the address noted above. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or Telecommunication Device for the Deaf (TDD) at (608) 264–8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis of Rules

Statutory authority: ss. 101.02 (1), 101.63 (1), 101.73 (1), and 145.02 (3) and (4)

Statutes interpreted: ss. 145.02 (4), 145.045, 145.13, 145.135, 145.19, 145.20

Under s. 145.02, Stats., the Department of Commerce has the responsibility of safeguarding public health and the waters of the state relative to the construction, installation and maintenance of plumbing. One mechanism of the Department to fulfill this responsibility has been the promulgation of the state plumbing code, chapters Comm 81–87.

Currently, chapter Comm 83 of the plumbing code establishes specific and prescriptive minimum standards for the design, installation, inspection, and maintenance of private sewage systems. In order for the plumbing code to be effective and reasonable, code standards must be updated periodically to address new health and

safety concerns, issues and priorities as well as to reflect changing technologies, practices and materials. The current chapter Comm 83 has not been fully revised since 1980. The proposed revisions represent a complete reevaluation of the private sewage program as well as the code.

The goals guiding the reengineered program and code are to:

- Minimize risk to public health and the groundwater resources of the state;
- Provide measurable performance criteria for private onsite wastewater treatment systems, formerly known as private sewage systems, that ensure flexibility and predictability and facilitate improvements in system design and product development;
- Promote the recycling of constituents to minimize disposal volumes;
- Promote a wide range of treatment options that match users' needs and desires and the varied soil and site conditions in the state;
- Provide clear boundaries, based on system performance standards for the scope of the code;
- Promote competition in the design, installation and maintenance of systems, thereby, providing users with efficient and cost effective services;
- Provide procedures and establish priorities for the responsibilities of the design, installation and maintenance of systems to ensure that the respective responsibilities are clear and consistent and that compliance is occurring;
- Provide and promote active research and development of innovative technologies and solutions in the desired directions;
- Promote public education about treatment options and proper disposal of wastewater;
- Provide timely and efficient administration and enforcement of the regulatory system; and
- Acknowledge the powers and the abilities of municipalities to determine and control development.

The following summarizes by chapter the significant highlights of the rewrite:

Chapter Comm 2, Fee Schedule; The revisions involve the fees to be charged by the department for reviewing plans, petitions and products relative to private onsite wastewater treatment systems. The fees for plan review are now to be based upon the estimated design flow of the system and whether the proposed treatment components of the system have been previously recognized under the product approval process. Overall, the revised fee structure does not increase the cost of services or increase the department's revenues.

Chapters ILHR 20–25, One– and 2– Dwelling Code, Chapters ILHR 50–64, Commercial Building Code, Chapter Comm 66, Multifamily Dwelling Code; Revisions to the appendices of these codes are to provide greater clarity as to the issuance of building permits for projects served by private onsite wastewater treatment systems. The other revisions provide a cross reference to newly created ch. Comm 91 for privies, composting toilets and incinerating toilets.

Chapter Comm 81, Definitions and Standards; The newly created chapter consolidates into one location for the plumbing code definitions and referenced national standards.

Chapter Comm 82, Design, Construction, Installation, Supervision and Inspection of Plumbing; The changes:

- Reflect consistent terminology relative to ch. Comm 83;
- Recognize that sanitation needs can also be fulfilled by nonplumbing means such as composting toilets;
- Eliminate from the plumbing code the mandates of connecting to public sewer and/or water in light of the powers and authority held by municipalities and sewer and water districts under chs. 66 and 281.145, Stats., to require such connections;
- Establish requirements for composting toilets and systems that use water or other liquids as a transport medium; and
- Establish requirements for sanitary dump stations which receive the wastes from the holding tanks of travel trailers and such.

Chapter Comm 83, Private onsite Wastewater Treatment Systems; The chapter has been completely rewritten.

Unlike the current chapter, the revised ch. Comm 83 does not dictate or prioritize specific solutions or the selection of systems; rather, the chapter delineates the critical factors, parameters, options, prohibitions and limitations for the design of private onsite wastewater treatment systems. Under the framework of chapter Comm 83 designers and owners would be allowed to choose the appropriate method for reducing the contaminant loads and dispersing the hydraulic flows by selecting and arranging prerecognized treatment components, single use designs, and other means in conjunction with site limitations for a particular project.

The revisions under chapter Comm 83, include:

- Numerical performance standards for system design and operation relative to fecal coliform, suspended solids and biological oxygen demand;

- The allowance to use means other than subsurface soils for treatment and dispersal including artificial wetlands, shallow subsurface and surface irrigation, overland seepage and evapotranspiration, but not allowing dispersal to surface waters;

- Requirements to obtain plan approval and a sanitary permit before the installation of a private onsite wastewater treatment system may begin; local governmental units would still be required to review plans employing "conventional" technology for residential projects while plans for commercial projects or projects employing technologies not previously recognized would be reviewed by the department. Plans using other types of "prerecognized" solutions would be reviewed by either the local governmental unit or the department depending upon where the submitter wanted the service to be performed and if the local government unit had opted to provide this service;

- The testing of components before the system is put into service;

- A reference to the petition for variance process, chapter ILHR 3, whereby an equivalent alternative that meet the intent of a rule but not the letter may be recognized – the petition for variance process is not to waive compliance and does not supersede statutory requirements or local ordinances;

- The allowance for local governmental units, by ordinance, to delay the implementation of some technologies upon the adoption of the code and to prohibit or limit the use of holding tanks, discharge to ground surface or discharge to a confined surface water;

- The prohibition of cesspools and outfall pipes discharging sewage to the surface, including existing installations;

- Design standards that:

- Delineate the contaminant loads and hydraulic flows for residential occupancies based on bedrooms and occupants;

- Allow for the segregation of graywater and blackwater wastes and designs to deal with each;

- Specify parameters for surface dispersal;

- Recognize that treatment components may be installed inside buildings provided the components are gas-tight, and pose no health or safety risk to occupants.

- The establishment of an electronic maintenance tracking scheme that would monitor the required periodic servicing of private onsite wastewater treatment systems depending upon the type of technology employed; the maintenance service parameters would be established during either product review or plan review; the maintenance tracking system would allow regulatory agencies and the department to focus their enforcement activities; the maintenance tracking scheme would be expanded to include existing holding tanks; and

- The recognition that responsibility to operate and maintain a private onsite wastewater treatment system in accordance with its approval is assigned to the owner and the failure to report required maintenance would be considered a violation of the code and a "human health hazard" allowing possible direct intervention to correct the situation.

Chapter Comm 84 Plumbing Products; The revisions under this chapter:

- Require department approval of all prefabricated treatment components to be employed in a private onsite wastewater treatment system to recognize the performance capabilities of the components through the department's product approval process; product approvals are valid for 5 years and may be revised and renewed at the option of the submitter and may be rescinded by the department; the department's approval and recognition is determined with respect to the requirements and standards delineated in the plumbing code;

- Establish the voluntary submission and the department's recognition of system design solutions, treatment and dispersal, as private onsite wastewater treatment systems thereby facilitating the design process and the plan review process;

- Establish performance and specification requirements for treatment and holding components; and

- Establish performance and specification requirements for geotextile fabrics used in private onsite wastewater treatment systems to prevent backfill material from entering absorption areas.

Chapter Comm 85 Soil and Site Evaluations; This chapter currently addresses the proposed creation of subdivisions that are not to be served by public sewers and reflects the department's regulatory involvement under ch. 236, Stats. The department's role under ch. 236, Stats., is to facilitate the planning of adequate sewage disposal for new subdivisions. The department proposes to reduce its regulatory involvement in the present plat review process believing that the process is premature and duplicative. Premature in that a type of system is preselected and assigned to a site without knowing the type of building to be served and its wastewater needs or the preferences of the owner; duplicative in that plans for a private onsite wastewater treatment system will still be required to be submitted and approved for each project. Under s. 236.45, Stats., local governmental units will still be able to facilitate and regulate subdivisions relative to a wide variety of land use issues including sewerage.

The rewritten chapter will focus on providing consistent high quality soil and site data which may be used as the basis for selecting and designing a solution to address a project's wastewater management needs. Even though chapter Comm 83 does not dictate or prioritize specific solutions the data gathered from soil and site evaluations must be of such quality as to support the proposed design during the plan review process. The rules of this chapter will no longer require the soil tester to recommend a system type for a site, rather the selection of the design is the decision of the designer and the owner with the input of the soil tester in documenting a site's limitations or abilities to accommodate various solutions.

Chapter Comm 91 Sanitation; The newly created chapter is not part of the plumbing code and establishes minimum standards for the design, installation and maintenance of sanitation systems and devices which are alternatives to traditional plumbing fixtures and systems. The chapter covers composting toilets and systems, incinerating toilets and privies. Local units would be able to enact more stringent requirements or use limitations for these types of sanitation systems.

Pursuant to s. 160.19 (2) (b), Stats., the department has determined that the proposed rules under ch. Comm 83 and the rules under previous editions of ch. Comm 83 which govern existing private onsite wastewater treatment do not result in compliance with the preventive action limits under ch. NR 140 at a point of standards application for chlorides and total dissolved solids. The department has concluded that it is not technically or economically feasible to reduce chlorides to the preventive action limits. The principle contributor of chlorides in the wastewater stream of residential occupancies is the use of water treatment devices, softeners. Anion exchange is the only chemical process capable of removing chloride from water. The physical processes of removing chloride, such as evaporation and reverse osmosis, would separate feedwater into two streams, one with a reduced chloride content and the other with an increased chloride content, and results in still having to treat and dispose of chloride contaminated wastewater. The feasibility of complying with the preventive action limits for total dissolved solids is directly interrelated to chlorides since chlorides are a subset of total dissolved solids.

Also under s. 160.255, Stats., private sewage systems are exempted from meeting the NR 140 nitrogen standards by s. 160.255,

Stats., because of this legislative direction, nitrate standards were not included as part of the rules under ch. Comm 83.

Initial Regulatory Flexibility Analysis

See March 31, 1995, Wisconsin Administrative Register page 13.

Fiscal Estimate

See March 31, 1995, Wisconsin Administrative Register, page 13.

Notice of Hearings

Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 301.02, 301.03, 302.07, and 302.08, Stats., the Department of Corrections proposes the following rule affecting ch. DOC 303, relating to inmate conduct, inmate discipline and procedures for the imposition of discipline.

Hearing Information

The hearings are scheduled as follows:

July 30, 1997 Wednesday 11:00 a.m.	Room 223 State Office Bldg. 141 Northwest Barstow St. WAUKESHA, WI
July 30, 1997 Wednesday 3:00 p.m.	Secretary's Conference Rm. Dept. of Corrections 149 E. Wilson St., 3rd Flr. MADISON, WI
August 12, 1997 Tuesday 2:00 p.m.	Room 105 State Office Bldg. 718 West Clairemont EAU CLAIRE, WI

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Dept. of Corrections

Some provisions of the Department of Correction's administrative rule relating to inmate discipline have not been updated since the rule was created in 1980. With over 16 years of experience working with the rule, the Department proposes to update the rule.

This rule governs inmate conduct, describes the conduct for which an inmate may be disciplined, and describes the procedure for the imposition of discipline.

This rule adds the following offenses for which an inmate may be disciplined:

1. Causing bodily injury by spitting or throwing body fluids, waste, or other unidentified substances.
2. Intentionally causing the death of another.
3. Intentionally causing the unauthorized death of an animal.
4. Clutching, fondling, or touching the inmate's intimate parts for the purpose of sexual arousal or gratification or for purposes of exhibition whether clothed or unclothed.
5. Stating affection or sexual desire, verbally or in writing, whether personally written or commercially written or by drawings to staff members or the family of a staff member, or asks staff members or the family of a staff member for any staff member or the family of staff member's addresses, phone numbers, or favors, or in any manner requests special attention or action from a staff member or the family of staff members that is not appropriate.
6. Possessing any gang literature, creed, signal, or symbolism.
7. Sculpturing more than one part in hair, eyebrows, or facial hair.
8. Showing disrespect to any staff. Staff is defined to mean an employe, an independent contractor, or a volunteer of the Department

or an institution or facility where an inmate is housed by order of a court, a warden or the Department.

9. Causing damage to property by reckless conduct.

10. Intentionally making or altering any postage stamp or altering or erasing a postal cancellation mark or possessing any postage stamp that has been altered.

11. Knowingly mailing or attempting to mail any letter or parcel on which is affixed a canceled postage stamp.

12. Knowingly using a forged, counterfeit, or altering document, postage stamp or postage cancellation mark.

13. Attempting to circumvent the rules by sending a second envelope or letter intended to be mailed elsewhere within a sealed envelope is guilty of an offense.

14. Sending food samples through the mail.

15. Sending body fluids or body wastes through the mail is guilty of an offense.

16. Possessing gambling or betting pool or lottery material.

17. Participating in a lottery.

18. Negligently violating a punctuality rule.

This rule modifies disciplinary penalties to provide:

1. A new penalty— disciplinary separation. Disciplinary separation is being added to the major penalty selection as an alternative to program segregation. The difference is it is less punitive for the first time offender or the offender who normally follows the rules. That difference being there is not an automatic extension of mandatory release date with disciplinary separation. By law, program segregation requires an extension of one day for every 2 days served.

2. The time periods for no-contact visiting are consecutive.

3. The time periods for adjustment segregation are consecutive to the time in adjustment segregation and concurrent to the time in program segregation.

4. The time periods in program segregation are concurrent to all segregation or disciplinary separation time.

5. Time in TLU cannot be considered as time served.

6. Restitution may include escape expenses and any other expense caused by the inmate's actions whether intentional or reckless.

7. Forfeitures may be imposed for minor and major offenses and range from \$5 to \$15 dollars per offense.

8. Room confinement ranges from one to 15 days.

9. Building confinement ranges from one to 30 days.

10. Days in program segregation may be 150, 210, 240, 270, 330, or 360 days in addition to the current 30, 60, 90, 120, 180.

11. Maximum days in segregation have been increased for the following offenses to:

a. Sexual conduct	8 and 180
b. Fighting	360
c. Lying	180
d. False names & titles	180
e. Gambling	180

12. Adds possession of intoxicants and possession of drug paraphernalia to automatic major penalties.

This rule:

1. Applies the rule to all inmates in the custody of the Department regardless of the inmate's physical custody. The rule does preclude another jurisdiction that has the physical custody of the inmate from enforcing its rules. However, the inmate may not be disciplined twice for the same offense.

2. Provides a broad definition of staff which includes employes of the Department and employes of facility where an inmate is housed.

3. Tolls the time for commencing due process hearing when an inmate is in observation, control segregation, out of the institution by court or warden's order.

4. Removes the requirement that the hearing officer investigates whether a witness should be called.

5. Recognizes the right of an inmate to call witnesses outweighs the right of a witness to refuse to testify.

6. Provides that a dismissed conduct report serves as a warning that the behavior which was specified in the conduct report is a violation of the rules.

7. Provides that an inmate who uses a name other than the name by which the inmate was committed to the Department is guilty of an offense (deletes the words "unless the name was legally changed").

8. Provides that an inmate in segregation have a copy of all bulletins that are applicable to the inmate.

9. Provides that, when there is not a conduct report, inmate property having a value of \$25 or less shall be destroyed.

10. Removes the provision that property shall not be disposed of until the grievance is resolved.

11. Permits the warden to designate an investigator to do the investigation and write the conduct report.

Text of Rule

SECTION 1. DOC 303.01 (1), (2) and (3) (a) to (f) are amended to read:

DOC 303.01 Applicability and purposes. (1) Pursuant to authority vested in the department of corrections by s. 227.11 (2), Stats., the department adopts this chapter which applies to the department of corrections and to all adult inmates in its legal custody pursuant to a judgment of conviction or court order regardless of the inmate's physical custody. The department may discipline inmates in its legal custody. This subsection does not preclude another jurisdiction that has physical custody of the inmate from enforcing its rules related to inmate behavior. In no instance, may an inmate be disciplined twice for the same offense. It implements ss. 302.07, 302.08, 302.11 (2) and 302.04, Stats. The rules governing inmate conduct under this chapter describe all the conduct for which an inmate may be disciplined and the procedures for the imposition of discipline.

(2) "Discipline" includes ~~only~~ the sanctions described in s. DOC 303.08 ~~303.68~~. It does not include reclassification, change of program assignment, ~~loss or modification of MAP contract~~, change of housing assignment, or transfer to another institution.

(3) (a) The maintenance of order in correctional institutions;

(b) The maintenance of a safe setting in which inmates can participate in constructive programs;

(c) The rehabilitation of inmates through the development of their ability to live with others, within rules;

(d) Fairness in the treatment of inmates;

(e) The development and maintenance of respect for the correctional system and for our system of government through fair treatment of inmates;

(f) Punishment of inmates for misbehavior; ~~and~~

SECTION 2. DOC 303.02 (1) is renumbered s. DOC 303.02 (2) and DOC 303.02 (2) (a) to (d), as renumbered, are amended to read:

DOC 303.02 (2) "Authorized" means any of the following:

(a) According to departmental rules;

(b) According to posted policies and procedures;

(c) According to the latest order of a staff member;

(d) According to established institution custom; ~~or~~

SECTION 3. DOC 303.02 (2) is renumbered DOC 303.02 (3).

SECTION 4. DOC 303.02 (3) is renumbered DOC 303.02 (1).

SECTION 5. DOC 303.02 (5) is amended to read:

DOC 303.02 (5) "Communicate" means any of the following:

(a) To express verbally;

(b) To express in writing; ~~or~~

(c) To express by means of gesture(s) a gesture or other action(s) action.

SECTION 6. DOC 303.02 (6) (intro.), (6) (a) and (b) are amended to read:

DOC 303.02 (6) "Consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. A person under 15 years of age is incapable of consent as a matter of law. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence:

(a) A person who is 15 to 17 years of age;

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct; ~~or~~

SECTION 7. DOC 303.02 (9) is renumbered DOC 303.02 (10) and amended to read:

DOC 303.02 (10) "Inmate gang" means an unsanctioned group under s. DOC 309.22, or a group of inmates which threatens, intimidates, coerces or harasses other inmates or engages in activities which intentionally violate or encourage the intentional violation of statutes, administrative rules or institutional policies and procedures.

SECTION 8. DOC 303.02 (10) is renumbered DOC 303.03 (9).

SECTION 9. DOC 303.02 (11) is renumbered DOC 303.02 (13).

SECTION 10. DOC 303.02 (11) is created to read:

DOC 303.02 (11) "Institution" means a correctional institution or center or a prison defined under intensive sanctions in ch. DOC 333 or a facility that the department contracts with for services to inmates.

SECTION 11. DOC 303.02 (12) is renumbered DOC 303.02 (14).

SECTION 12. DOC 303.02 (12) is created to read:

DOC 303.02 (12) "Intimate parts" means breast, penis, buttocks, scrotum, or vaginal area.

SECTION 13. DOC 303.02 (12m) is renumbered DOC 303.02 (15).

SECTION 14. DOC 303.02 (13) is renumbered DOC 303.02 (16).

SECTION 15. DOC 303.02 (14) is renumbered DOC 303.02 (17) and amended to read:

DOC 303.02 (17) "Possession" means on one's person, in one's quarters, in one's locker or under one's immediate physical control. Possession is considered an activity under s. DOC 303.20 (3).

SECTION 16. DOC 303.02 (15) is renumbered DOC 303.02 (20) and amended to read:

DOC 303.02 (20) "Sexual contact" means any of the following:

(a) Kissing except for that allowed under policy and procedures of an institution;

(b) Handholding except for that allowed under policy and procedures of an institution;

(c) Touching by the intimate parts of one person to any part of another person whether clothed or unclothed. In this subsection, "intimate part" means breast, penis, buttocks, scrotum, or vaginal area, whether clothed or unclothed; or

(d) Any touching by any part of one person or with any object or device of the intimate parts of another person or any other parts of the body that may result in sexual arousal or gratification for either party except as provided for in s. DOC 309.11 (2).

SECTION 17. DOC 303.02 (16) is renumbered DOC 303.02 (21).

SECTION 18. DOC 303.02 (17) is renumbered DOC 303.02 (19).

SECTION 19. DOC 303.02 (18) is renumbered DOC 303.02 (24) and amended to read:

DOC 303.02 (24) "Superintendent Warden" means the superintendent warden of at an institution, or the warden's designee.

SECTION 20. DOC 303.02 (18) is created to read:

DOC 303.02 (18) "Public" means outside of the inmate complaint review system.

SECTION 21. DOC 303.02 (19) is renumbered DOC 303.02 (25) and DOC 303.02 (25) (a) to (c), as renumbered, are amended to read:

DOC 303.02 (25) (a) Because the actor put the victim in fear by the use or threat of imminent use of physical violence on ~~him or her~~ the victim, or on a person in ~~his or her~~ the victim's presence, or on a member of ~~his or her~~ the victim's immediate family; ~~or,~~

(b) Because the actor purported to be acting under legal authority; ~~or,~~

(c) Because the victim did not understand the nature of the thing to which ~~he or she~~ the victim consented, either by reason of ignorance, or mistake of fact or of law other than criminal law, or by reason of youth, or by reason of defective mental condition, whether permanent or temporary.

SECTION 22. DOC 303.02 (22) and (23) are created to read:

DOC 303.02 (22) "Staff" means any state employe, an independent contractor, a volunteer of the department or institution where an inmate is housed by order of a court, a warden or the department.

(23) "TLU" means temporary lock up which is a nonpunitive segregated status allowing an inmate to be removed from the general population pending further administrative action.

SECTION 23. DOC 303.03 (2) is amended to read:

DOC 303.03 (2) An inmate may be found guilty of a lesser included offense of the offense charged, even if ~~he or she~~ the inmate was not expressly charged with the lesser included offense.

SECTION 24. DOC 303.04 (1) is amended to read:

DOC 303.04 (1) "Intentionally" means that the inmate had a purpose to do the thing or cause the result specified, or ~~believed that his or her act if successful would cause the result specified~~ is aware that the inmate's conduct is practically certain to cause that result. It is not necessary to prove the precise harm or result.

SECTION 25. DOC 303.05 (1) to (4) (a) to (c) are amended to read:

DOC 303.05 (1) MENTAL INCAPACITY. At the time of the conduct, the inmate, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform ~~his or her~~ the inmate's conduct to the sections: alleged to have been violated under this chapter.

(2) INVOLUNTARY INTOXICATION. At the time of the conduct, the inmate, as a result of involuntary intoxication, lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform ~~his or her~~ the inmate's conduct to the rules. This section does not afford a defense if the intoxicant was taken voluntarily.

(3) MISTAKE. The inmate honestly erred (~~except an error regarding the contents of this chapter~~), and such error negates the existence of a state of mind essential to the offense. An error regarding the contents of this chapter is not a defense.

(4) SELF-DEFENSE. An inmate may use the minimum amount of force necessary to prevent death or bodily injury to ~~himself or herself~~ the inmate. An inmate may never use force which may cause death to another in exercising the privilege of self-defense. An inmate may never use a weapon in exercising the privilege of self-defense. An inmate may not continue to exercise the privilege of self-defense after an order to stop. In determining whether the minimum force was used in exercising the privilege of self-defense, staff should consider all of the following:

(a) Whether a weapon was used by the aggressor; ~~and,~~

(b) The relative size of the inmates; ~~and,~~

(c) The opportunity of the inmate who claims self-defense to flee or get assistance from a staff member; ~~and,~~

SECTION 26. DOC 303.05 (4) (e) is created to read:

DOC 303.05 (4) (e) Any other relevant information.

SECTION 27. DOC 303.05 (5) is amended to read:

DOC 303.05 (5) ORDERS. An inmate may disobey a rule if ~~he or she~~ the inmate is expressly authorized to disobey it by a staff member.

SECTION 28. DOC 303.06 (1) is amended to read:

DOC 303.06 Attempt. (1) An inmate is guilty of attempt to violate a rule if both of the following are all true:

(a) The inmate intended to do something which would have been a rule violation; ~~and if actually committed by the inmate.~~

(b) The inmate did acts which showed that ~~he or she~~ the inmate intended to violate the rule at that time when the acts occurred.

SECTION 29. DOC 303.07 (1) (intro.), (1) (a) to (c), and (3) are amended to read:

DOC 303.07 Aiding and abetting. (1) If an inmate intentionally does any of the following things, ~~he or she~~ the inmate is guilty of aiding and abetting a rule violation:

(a) Tells or hires another inmate to commit a rule violation; ~~and,~~

(b) Assists another inmate, prior to a rule violation, in planning or preparing for it, with intent that the offense be committed; ~~and,~~

(c) Assists another inmate during commission of an offense, whether or not ~~this~~ the assistance was planned in advance; ~~or,~~

(3) An inmate may be charged with both a substantive offense and aiding and abetting that offense, based on the same incident, but ~~he or she~~ the inmate may be found guilty of only one.

SECTION 30. DOC 303.08 (2) is amended to read:

DOC 303.08 (2) Each institution shall maintain at least one bulletin board for bulletins of general applicability. Bulletin boards shall be so located that every inmate has an opportunity to read all bulletins which apply to ~~him or her~~ the inmate. Additional bulletin boards should be maintained in workshops, classrooms, recreation areas, housing units, or other places for the posting of notices which apply only to inmates who use the particular facility involved. Each inmate at a maximum security institution shall be given a copy of all bulletins which are applicable to him or her in segregation status shall have a copy of all bulletins that are applicable to the inmate made available through the housing unit staff.

SECTION 31. DOC 303.09 (2) is amended to read:

DOC 303.09 (2) A copy of this pamphlet or other appropriate form shall be given to every inmate. Any time major changes are made, written notice to inmates shall be provided. The pamphlet shall be entitled ~~Disciplinary Rules~~ Rules of Department of Corrections.

SECTION 32. DOC 303.10 (1) (a) to (d) are amended to read:

DOC 303.10 (1) (a) Any item which inmates may not knowingly possess under ss. DOC 303.42 to 303.47 ~~(, for example including,~~ money, intoxicants, drug paraphernalia and weapons); ~~and,~~

(b) Any item which is not state property and is on the institution grounds but not in the possession of any person; ~~and,~~

(c) Any item which is in the possession of an inmate, if knowing possession of it would violate s. DOC 303.47; ~~and,~~

(d) Any item which an inmate may possess but which comes into ~~his or her~~ the inmate's possession through unauthorized channels or which is not on the inmate's property list and is required to be; ~~or,~~

SECTION 33. DOC 303.10 (1) (f) and (g) are created to read:

DOC 303.10 (1) (f) Property that is damaged or altered, whether or not the property is damaged intentionally, recklessly or negligently.

(g) Anything used as evidence for a disciplinary hearing deemed contraband by the adjustment committee or hearing officer.

SECTION 34. DOC 303.10 (3) (a) (title), (c), and (d), are amended to read:

DOC 303.10 (3) (a) (title) Currency or money.

(3) (c) Upon proof of ownership and the source of a U.S. bond or other security, the item shall be held in the institution business office until it can be returned to the owner. If the owner is an inmate, it shall be held until ~~his or her~~ the inmate's release from the institution, at which time it shall be transferred with the inmate's general or trust account funds to the department cashier. It shall be returned to the inmate upon discharge or at any earlier time when the supervising agent determines that continued control over it is no longer necessary.

(3) (d) If the owner is known, property may be returned to the ~~true~~ owner, placed in storage for 30 days, or sent at the inmate's expense to another, in accordance with the nature of the property, unless the

owner transferred the property in an unauthorized manner. Otherwise, items of inherent value shall be sold through the department's purchasing officer and money received shall be placed in the state's general fund. Items of inconsequential value (having a value of \$525 or less) shall be destroyed. Property items authorized but in excess of the amount allowed inmates may be disposed of or sent at the inmate's expense to anyone designated by the inmate or stored.

SECTION 35. DOC 303.10 (4) is amended to read:

DOC 303.10 (4) If an inmate believes that property should be returned, placed in storage for 30 days or sent out at his or her the inmate's direction, and a decision to dispose of it in a different manner has been made, the inmate may file a grievance an appeal in accordance with this chapter. The property shall not be disposed of until the grievance is resolved.

SECTION 36. DOC 303.11 (1), (3), (4) (intro.), (4) (a) to (d), (5) and (6) are amended to read:

DOC 303.11 Temporary lockup: use. (1) An inmate may be placed in temporary lockup (TLU) or TLU by a security supervisor, security director, or superintendent warden.

(3) No inmate may remain in TLU more than 21 days, except that the superintendent warden, with notice to the division administrator, may extend this period for up to 21 additional days for cause. The security director shall review the status of each inmate in TLU every 7 days to determine whether TLU continues to be appropriate. If upon review it is determined the TLU is not appropriate, the inmate shall be released from TLU immediately.

(4) An inmate may be placed in TLU and kept there only if the decision maker is satisfied believes that it is more likely than not that one or more of the following is true:

(4) (a) If the inmate remains in the general population, the inmate will seek to intimidate a witness in a pending investigation or disciplinary action;

(b) If the inmate remains in the general population, he or she the inmate will encourage other inmates by example, expressly, or by their the inmate's presence, to defy staff authority and thereby erode staff's ability to control a particular situation;

(c) If the inmate remains in the general population, it will create a substantial danger to the physical safety of the inmate or another;

(d) If the inmate remains in the general population, it will create a substantial danger that the inmate will try to escape from the institution;

(5) When an inmate is placed in TLU, the person who does so shall state the reasons on the appropriate form and shall include the facts upon which the decision is based. The inmate shall be given a copy of the form. Upon review, the security director shall approve or disapprove the TLU on the form.

(6) Conditions in TLU shall, insofar as feasible, be the same as those in the status from which the inmate came prior to TLU placement. An inmate who had been earning institution compensation shall continue to be compensated at the rate earned in his or her the inmate's previous status, except that an inmate employed by corrections prison industries shall be compensated in accordance with s. DOC 313.08 313.11. If 1983 Wis. Act 528 does not apply to the inmate, he or she the inmate shall continue to earn extra good time credit. The inmate may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside the cell if the superintendent or designee warden determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

SECTION 37. DOC 303.11 (7) is created to read:

DOC 303.11 (7) TLU time shall not be considered time served.

SECTION 38. DOC 303.11 Note is repealed.

SECTION 39. DOC 303.12 is renumbered DOC 303.12 (1) and amended to read:

DOC 303.12 Battery. (1) Any inmate who intentionally causes bodily injury or harm to another is guilty of an offense.

SECTION 40. DOC 303.12 (2) is created to read:

DOC 303.12 (2) Any inmate who spits or throws body fluids or waste or any substance on another is guilty of an offense.

SECTION 41. DOC 303.12 (3) is created to read:

DOC 303.12 (3) Any inmate who intentionally causes the death of another is guilty of an offense.

SECTION 42. DOC 303.12 (4) is created to read:

DOC 303.12 (4) Any inmate who intentionally causes bodily injury or the unauthorized death of an animal is guilty of an offense.

SECTION 43. DOC 303.13 is amended to read:

DOC 303.13 Sexual assault—intercourse. Any inmate who has sexual intercourse, as defined in s. DOC 303.02 (16) 303.02 (21), with another person without that person's consent and knowing that it is without that person's consent is guilty of an offense.

SECTION 44. DOC 303.14 is amended to read:

DOC 303.14 Sexual assault—contact. Any inmate who intentionally has sexual contact, as defined in s. DOC 303.02 (15) 303.02 (20), with another person without that person's consent and knowing that it is without that person's consent is guilty of an offense.

SECTION 45. DOC 303.15 (1) (a) to (d) are amended to read:

DOC 303.15 (1) (a) Has sexual intercourse, as defined in s. DOC 303.02 (16) 303.02 (21), with another person;

(b) Has sexual contact, as defined in s. DOC 303.02 (15) 303.02 (20), with another person;

(c) Requests, hires or tells another person to have sexual intercourse or sexual contact;

(d) Exposes his or her the inmate's intimate parts to another person for the purpose of sexual arousal or gratification, or for exhibitionist purposes the purpose of exhibition and while observable by others; or

SECTION 46. DOC 303.15 (1) (f) is created to read:

DOC 303.15 (1) (f) Clutches, fondles, or touches the inmate's intimate parts, whether clothed or unclothed, for the purpose of exhibition and while observable by others.

SECTION 47. DOC 303.16 (1) and (2) are amended to read:

DOC 303.16 (1) Communicates to another an intent to physically harm or harass that person or another;

(2) Communicates an intent to cause damage to or loss of that person's or another person's property; or

SECTION 48. DOC 303.20 (1) is amended to read:

DOC 303.20 Group resistance and petitions. (1) Any inmate who intentionally participates in any group activity which is not approved under s. DOC 309.365 309.22 or is contrary to provisions of this chapter, to institution policies and procedures or to a direct verbal order from a staff member, but which does not create a serious risk of injury to persons or property, is guilty of an offense.

SECTION 49. DOC 303.20 (2) (a) is amended to read:

DOC 303.20 (2) (a) Group complaints in the inmate complaint review system;

SECTION 50. DOC 303.20 (2) (b) is repealed.

SECTION 51. DOC 303.20 (2) (c) and (d) are amended to read:

DOC 303.20 (2) (c) Authorized activity by groups approved by the superintendent warden under s. DOC 309.365 309.22 or legitimate activities required to submit a request under s. DOC 309.365 309.22 (3) or (4); or

DOC 303.20 (2) (d) Group petition to people outside an institution, for example including, to legislators, courts or newspapers.

SECTION 52. DOC 303.20 (3) is amended to read:

DOC 303.20 (3) Any inmate who intentionally participates in any activity with the purpose of identifying himself or herself the inmate with an inmate gang, as defined in s. DOC 303.02 (9) 303.02 (10), or possesses any gang literature, creed, symbols or symbolisms is guilty of an offense. Possession of gang literature, creed symbols or symbolism is an act which shows that the inmate intended to violate the rule. Institution staff shall determine on a case by case basis if sculpturing of more than one part in hair or sculpturing in eyebrows or facial hair may be an unsanctioned group activity.

SECTION 53. DOC 303.21 (1) is amended to read:

DOC 303.21 Conspiracy. (1) If 2 or more inmates ~~or an inmate or inmates and any other party~~ plan or agree to do acts which are ~~forbidden prohibited~~ under this chapter, all of ~~them~~ inmates are guilty of an offense.

SECTION 54. DOC 303.22 (1) (intro.) and (1) (a) to (d) are amended to read:

DOC 303.22 Escape. (1) An inmate who does or attempts to do any of the following without permission and with the intent to escape is guilty of an offense.

(a) Leaves an institution;

(b) Leaves the custody of a staff member while outside of the institution;

(c) Does not follow ~~his or her~~ the inmate's assigned schedule; ~~or,~~

(d) Leaves the authorized area to which ~~he or she~~ the inmate is assigned and does not return promptly.

SECTION 55. DOC 303.23 is amended to read:

DOC 303.23 Disguising identity. Any inmate who intentionally conceals, alters or disguises ~~his or her~~ the inmate's usual appearance with the intention of preventing identification is guilty of an offense.

SECTION 56. DOC 303.24 (1) (a) to (c), and (2) are amended to read:

DOC 303.24 (1) (a) A verbal or written order from any staff member, directed to the inmate or to a group of which the inmate is or was a member;

(b) A bulletin which applies to the inmate and which was posted or distributed in compliance with s. DOC 303.08; ~~or,~~

(c) Any other order which applies to the inmate and of which ~~he or she~~ the inmate has actual knowledge.

(2) An inmate is guilty of an offense if ~~he or she~~ the inmate intentionally commits an act which violates an order, whenever the inmate knew or should have known that the order existed.

SECTION 57. DOC 303.25 is amended to read:

DOC 303.25 Disrespect. Any inmate who intentionally or recklessly overtly shows disrespect for any ~~person performing his or her duty as an employe of the state of Wisconsin~~ staff is guilty of an offense, whether or not the subject of the disrespect is present and even if the expression of disrespect is in writing. Disrespect includes, but is not limited to, derogatory or profane writing, remarks or gestures, name-calling, spitting, yelling, and other acts ~~intended as public made outside the formal complaint process which~~ expressions of disrespect for authority ~~and are~~ made to other inmates and staff. Disrespect does not include all ~~oral or written~~ criticism of staff members, ~~such as~~ criticism of them expressed through the mail, ~~thoughts and attitudes critical of them, or activity in therapy or conduct allowed within treatment groups for purposes of the inmate's treatment~~.

SECTION 58. DOC 303.26 (1) to (4) are amended to read:

DOC 303.26 (1) Offers or gives anything of value to a staff member or the family of a staff member. *Exception:* This subsection does not apply ~~in accordance with contraband regulations;~~ property of an inmate ~~which may be entrusted to a designated staff member for the purpose of storage or sending it to a friend or relative of the inmate in accordance with contraband regulations;~~

(2) Requests or accepts anything of value from a staff member or the family of a staff member. *Exceptions:* ~~This subsection does not apply to~~ state property which the staff member is authorized to issue or property belonging to the inmate which was in storage or which has been sent or brought in;

(3) Buys anything from, or sells anything to, a staff member or the family of a staff member. *Exception:* ~~This subsection does not apply to~~ hobby items for sale ~~to the public~~ in accordance with institutional procedures; ~~or,~~

(4) Requests a staff member or family of a staff member to purchase anything for ~~him or her~~ the inmate. *Exception:* the superintendent

The warden may allow this by special authorization, or may designate a staff member to handle such requests.

SECTION 59. DOC 303.26 (6) is created to read:

DOC 303.26 (6) Conveys affection to, about or of staff verbally or in writing whether personally written or commercially written or by drawings; or asks for addresses, phone numbers, favors or requests special attention.

SECTION 60. DOC 303.271 (1), (2), and (3) are amended to read:

DOC 303.271 Lying about staff. (1) Any inmate who knowingly makes a false written or oral statement about a staff member ~~with the intent to harm the staff member~~ and makes that false statement outside the complaint review system ~~public~~ is guilty of an offense.

(2) This section applies to all false statements ~~including with the exception of~~ those made in the inmate complaint review system, ~~which are revealed to persons outside the complaint system as defined by the written complaint submitted on the official complaint form, and information provided directly to the designated examiner.~~

(3) A staff member who believes ~~he or she~~ the staff member is the subject of a false statement may not write the conduct report. The staff member may contact his or her supervisor who shall do an investigation, and, if the supervisor believes a violation has occurred, the supervisor shall write a conduct report. An inmate complaint investigator may not write a conduct report alleging lying about staff. The warden may designate an investigator to do the investigation and write the conduct report.

SECTION 61. DOC 303.29 (intro.) and (1) are amended to read:

DOC 303.29 Talking. Each institution shall post specific policies and procedures stating times and places when talking is forbidden. Any inmate who talks during those times or in those places is guilty of an offense, unless either of the following circumstances exist:

(1) The inmate is replying to a question addressed to ~~him or her~~ the inmate by a staff member; ~~or,~~

SECTION 62. DOC 303.31 (1) and (2) are amended to read:

DOC 303.31 (1) A title for ~~himself or herself~~ the inmate other than Mr., Ms., Miss, or Mrs., as appropriate;

(2) A name other than the name by which ~~he or she~~ the inmate was committed to the department, ~~unless the name was legally changed.~~

SECTION 63. DOC 303.32 (1) (intro.) and (1) (a) are amended to read:

DOC 303.32 Enterprises and fraud. (1) Any inmate who engages in a business or enterprise, whether or not for profit, or who sells anything except as specifically allowed under other sections is guilty of an offense, except ~~that for the following situation:~~

(1) (a) An inmate who was owner or part owner of any business or enterprise prior to sentencing may communicate with ~~his or her~~ the inmate's manager or partner concerning the management of the enterprise or business; ~~and,~~

SECTION 64. DOC 303.35 is amended to read:

DOC 303.35 Damage or alteration of property. (1) Any inmate who intentionally or recklessly damages, destroys or alters any property of the state or of another person without authorization is guilty of an offense.

(2) Any inmate who intentionally or recklessly damages, destroys ~~or, alters, or disposes of~~ ~~his or her~~ the inmate's own property without the permission of the ~~supervisor~~ staff of his or her the inmate's own living unit is guilty of an offense.

SECTION 65. DOC 303.36 (1) is renumbered DOC 303.36.

SECTION 66. DOC 303.36 (2) is repealed.

SECTION 67. DOC 303.41 is repealed and recreated to read:

DOC 303.41 Counterfeiting and forgery. Any inmate who intentionally makes, uses, possesses, or alters any document so it appears that the document was made or signed by a different person; or that the document was signed at a different time or with different provisions is guilty of an offense.

SECTION 68. DOC 303.42 (1) (intro.), and (1) (a) to (1) (d) are amended to read:

DOC 303.42 Possession of money. (1) Except as specifically authorized, any inmate who knowingly has in ~~his or her~~ the inmate's possession any of the following is guilty of an offense:

- (a) Coins or paper money;
- (b) A check;
- (c) A money order;
- (d) A savings bond.

SECTION 69. DOC 303.43 (1) is amended to read:

DOC 303.43 Possession of intoxicants. (1) Except as specifically authorized, any inmate who knowingly has in ~~his or her~~ the inmate's possession any intoxicating substance ~~to include~~ including items which have a legitimate use and are used under the supervision of a staff member, such as approved glue or cough syrup, is guilty of an offense.

SECTION 70. DOC 303.46 (1) is amended to read:

DOC 303.46 Possession of excess smoking materials. (1) Any inmate who knowingly has in ~~his or her~~ the inmate's possession over 4 cartons of cigarettes or over 50 cigars is guilty of an offense.

SECTION 71. DOC 303.47 (2) (a) to (d) are amended to read:

DOC 303.47 (2) (a) Items of a type which are not allowed, according to the posted list;

(b) Allowable items in excess of the quantity allowed, according to the posted list;

(c) Nonexpendable allowable items which are required to be listed but are not listed on the inmate's property list;

(d) Items which do not belong to the inmate, except state property issued to the inmate for ~~his or her~~ the inmate's use, such as sheets and uniforms.

SECTION 72. DOC 303.47 (3) is renumbered DOC 303.47 (4).

SECTION 73. DOC 303.47 (3) is created to read:

DOC 303.47 (3) Any inmate who possesses any personal written information relating to any staff of the department, including a staff's or staff's immediate family home address or telephone number is guilty of an offense.

SECTION 74. DOC 303.48 (2) is amended to read:

DOC 303.48 (2) Any inmate who sends through the mail anything which, according to ss. DOC 303.42 to 303.47, ~~he or she~~ the inmate may not have in ~~his or her~~ the inmate's possession, is guilty of an offense. Items in safekeeping may be sent out at the inmate's expense. Some items which were seized may be sent out at the inmate's expense, in accordance with s. DOC 303.10.

SECTION 75. DOC 303.48 (3) to (6) are created to read:

(3) Any inmate who does any of the following is guilty of an offense:

(a) Intentionally makes or alters any postage stamp or alters or erases a postal cancellation mark or possesses any postage stamp that has been altered.

(b) Knowingly mails or attempts to mail any letter or parcel on which is affixed a canceled postage stamp.

(c) Knowingly uses a forged, counterfeit, or altered document, postage stamp or postal cancellation mark.

(4) Any inmate who attempts to circumvent the rules under s. DOC 309.04 related to mail or correspondence by sending a second envelope or letter intended to be mailed elsewhere within a sealed envelope is guilty of an offense. This subsection does not prevent an inmate from sending pre-addressed legal documents to someone to mail.

(5) Any inmate who sends food samples through the U. S. mail or through any other mailing system is guilty of an offense.

(6) Any inmate who sends body fluids or body wastes, including pubic hair, through the mail is guilty of an offense.

SECTION 76. DOC 303.49 (intro.), (1) and (2) are amended to read:

DOC 303.49 Punctuality and attendance. Inmates shall attend and be on time for all events, classes, meetings, meals, appointments, work assignments, counts, and the like for any similar activities for which they are scheduled. Any inmate who intentionally, recklessly or negligently violates this section is guilty of an offense, unless one of the following exist:

(1) The inmate is sick and reports this fact as required by posted institution policies and procedures;

(2) The inmate has a valid pass to be in some other location.

SECTION 77. DOC 303.51 (intro.) and (1) are amended to read:

DOC 303.51 Leaving assigned area. Any inmate who intentionally leaves a room or area where ~~he or she~~ the inmate is attending any scheduled activity such as a class, meal, religious service, group meeting or other event, or who leaves the immediate area of a work or school assignment before the event or the work or school assignment is over is guilty of an offense, unless one of the following exists:

(1) The inmate gets permission to leave from a staff member supervising the activity.

SECTION 78. DOC 303.511 is amended to read:

DOC 303.511 Being in an unassigned area. Any inmate who, without a staff member's permission, intentionally enters or remains in a room or area other than the one to which ~~he or she~~ the inmate is assigned is guilty of an offense.

SECTION 79. DOC 303.52 (1) (intro.) and (1) (a) are amended to read:

DOC 303.52 Entry of another inmate's quarters. (1) Any inmate who enters the quarters of any other inmate or permits another to enter ~~his or her~~ the inmate's quarters, is guilty of an offense, unless such entry is the result of one of the following:

(1) (a) Part of a work assignment and under the supervision of a staff member.

SECTION 80. DOC 303.55 is amended to read:

DOC 303.55 Dirty quarters. Each institution or residence hall shall adopt and post specific procedures regulating the organization, neatness and cleanliness of inmates' quarters. Any inmate whose quarters do not comply with the posted procedures is guilty of an offense, provided that the inmate had knowledge of the condition of ~~his or her~~ the inmate's quarters and had the opportunity to clean or rearrange it.

SECTION 81. DOC 303.56 (1) is amended to read:

DOC 303.56 Poor grooming. (1) Any inmate whose personal cleanliness or grooming is a health hazard to ~~himself or herself~~ the inmate, or others, and who has knowledge of this condition and the opportunity to correct it, but does not, is guilty of an offense.

SECTION 82. DOC 303.57 (1) to (4) are amended to read:

DOC 303.57 (1) Takes more of a prescription medication than was prescribed;

(2) Takes a prescription medication more often than was prescribed;

(3) Takes a prescription medication which was not prescribed for ~~him or her~~ or the inmate.

(4) Possesses or takes any prescription medication except at the time and place where ~~he or she~~ the inmate is supposed to take it.

SECTION 83. DOC 303.57 (5) is created to read:

DOC 303.57 (5) Improperly disposes of any prescription medication. The inmate shall return unused medication to staff.

SECTION 84. DOC 303.58 is amended to read:

DOC 303.58 Disfigurement. Any inmate who intentionally cuts, pierces, removes, mutilates, discolors or tattoos any part of ~~his or her~~ the inmate's body or the body of another, is guilty of an offense.

SECTION 85. DOC 303.59 (1), (2) (b), and (2) (d) are amended to read:

DOC 303.59 Use of intoxicants. (1) Any inmate who intentionally takes into ~~his or her~~ the inmate's body any intoxicating substance, except prescription medication in accordance with the prescription, is guilty of an offense.

(2) (b) The results of a test conducted under par. (a) on a specimen of an inmate's urine shall be confirmed by a second test if all of the following conditions are met:

1. The test under par. (a) is the sole evidence of use of intoxicants;

2. A major penalty as defined in s. DOC 303.68 (1) (a) ~~will~~ may be imposed as a result of the test under par. (a);

3. The inmate does not admit the use of intoxicating substances; ~~and~~

4. The inmate requests a confirmatory test immediately after being informed of a positive test result.

(2) (d) An inmate who requests a confirmatory test shall pay for ~~half~~ the cost of the test. If the inmate does not have sufficient funds to pay for ~~half~~ the cost of the test, the institution in which the inmate is confined shall loan the inmate the necessary funds. If the confirmatory test does not validate the results of the first test, the inmate shall be refunded any money ~~he or she~~ the inmate contributed to the cost of the confirmatory test.

SECTION 86. DOC 303.60 is amended to read:

DOC 303.60 Gambling. (1) Any inmate who gambles or possesses any gambling material is guilty of an offense. "Gambles" includes betting money or anything of value on the outcome of all or any part of any game of skill or chance or an athletic contest or on the outcome of any event.

(2) Any inmate who organizes a lottery or betting pool or game played for money or anything of value or possesses any materials relating to a lottery or betting pool, is guilty of an offense.

SECTION 87. DOC 303.60 (3) is created to read:

DOC 303.60 (3) Any inmate who participates in any lottery, sweepstakes, or other form of gambling, is guilty of an offense.

SECTION 88. DOC 303.61 is amended to read:

DOC 303.61 Refusal to work or attend school. Any inmate who intentionally refuses to perform a work assignment or attend school, and who is physically able to do so, is guilty of an offense, unless ~~he or she~~ the inmate has specific permission to do so.

SECTION 89. DOC 303.63 (1) (intro.) and (a) to (j) are amended to read:

DOC 303.63 Violations of institution policies and procedures. (1) Each institution may make specific substantive disciplinary policies and procedures relating to any of the following:

- (a) Visiting;
- (b) Recreation;
- (c) Smoking;
- (d) Movement within and outside the institution;
- (e) Attire;
- (f) Personal property;
- (g) The use of institution facilities;
- (h) Talking;
- (i) Sale of craft items;
- (j) Authorized enterprises; ~~and~~

SECTION 90. DOC 303.63 (1) (L) is created to read:

DOC 303.63 (1) (L) Any other area requiring regulation for the orderly operation of the institution by the institution that will not conflict with the laws, rules, and regulations of the state of Wisconsin and are deemed necessary for the safety and security of the inmates, staff, and public.

SECTION 91. DOC 303.631 is amended to read:

DOC 303.631 Violating conditions of leave. Any inmate who violates conditions imposed under s. DOC ~~326.07~~ 326.06 (1) or (2) for leave is guilty of an offense.

SECTION 92. DOC 303.64 (3) and (4) are amended to read:

DOC 303.64 (3) The violation may be referred to the security ~~supervisor~~ director in writing by a conduct report as provided under

s. DOC 303.66. Violations referred to the security supervisor may be dealt with as follows:

(a) The security ~~supervisor~~ director may dismiss, alter or correct the report as provided under s. DOC 303.67.

(b) If the violation is a minor one, the security ~~supervisor~~ director shall refer the matter to a hearing officer to be disposed of in accordance with s. DOC 303.75.

(c) If the violation is a major one, the security ~~supervisor~~ director shall refer the matter to a hearing officer to be disposed of in accordance with ss. DOC 303.76 to 303.84.

(4) Violations of the criminal law may be referred to the sheriff for further investigation and to the district attorney for prosecution. See ~~s. DOC 303.73. Whether or not prosecution is started, the incident may be handled as a disciplinary offense.~~

SECTION 93. DOC 303.64 (5) is created to read:

DOC 303.64 (5) If found guilty, an inmate may be referred to program review to review the inmate's program assignment and custody level.

SECTION 94. DOC 303.65 (1) (intro.), (1) (a), (b) and (c) and (4) are amended to read:

DOC 303.65 Offenses that do not require a conduct report. (1) Staff members are not required to make official conduct reports on all observed violations of the disciplinary rules. Under any of the following conditions, the staff member may merely inform the inmate that ~~his or her~~ the inmate's behavior is against the rules and discuss the inmate's behavior and give a warning if:

(a) The inmate is unfamiliar with the rule;

(b) The inmate has not violated the same or a closely related rule recently within the previous year ~~or~~ whether or not a conduct report was made;

(c) The inmate is unlikely to repeat the offense if warned and counseled;

(4) The security director may strike a charge if ~~he or she~~ the security director believes a conduct report is inappropriate, in accordance with s. DOC 303.67. The decision by the security director not to strike or to strike is not reviewable by the hearing officer, adjustment committee or ~~superintendent~~ warden.

SECTION 95. DOC 303.66 (1) and (2) are amended to read:

DOC 303.66 Conduct report. (1) Except under the conditions described in s. DOC 303.65, any staff member who observes or finds out about a rule violation shall do any investigation necessary to assure ~~himself or herself~~ the staff member that a violation occurred, and if ~~he or she~~ the staff member believes a violation has occurred, shall write a conduct report. If more than one staff member knows of the same incident, only one of them shall write a conduct report.

(2) In the conduct report, the staff member shall describe the facts in detail and what other staff members told ~~him or her~~ the staff member, and list all sections of ch. DOC 303 which were allegedly violated, even if they overlap. Any physical evidence shall be included with the conduct report.

SECTION 96. DOC 303.67 (3) (a) and (5), are amended to read:

DOC 303.67 (3) (a) The security director may dismiss a conduct report if ~~he or she~~ the security director believes that, according to s. DOC 303.65, it should not have been written.

(5) Following the review described in this section, the security director shall sign all reports ~~he or she~~ the security director has approved.

SECTION 97. DOC 303.68 (1) (a), (1) (b), (3), (4) (intro.), (4) (a) to (d), and (5) are amended to read:

DOC 303.68 Major and minor penalties and offenses. (1) (a) A "major penalty" is adjustment segregation as defined in ss. DOC 303.69 and 303.84, program segregation as defined in ss. DOC 303.70 and 303.84, loss of earned good time or extension of mandatory release date under s. DOC 303.84, no-contact visiting under s. DOC 309.165 or all ~~3~~ 4 where imposed as a penalty for violating a disciplinary rule, or forfeitures of \$6 to \$10 or room confinement of 16 to 30 days. Any minor penalty may be imposed for a violation where a major penalty could be imposed. Restitution may be imposed in addition to or in lieu of any major penalty.

(1) (b) A "minor penalty" is a reprimand, loss of recreation privileges, building confinement, room confinement for 1 to 15 days, loss of a specific privilege, extra duty, forfeitures of \$1 to \$5, no-contact visiting for violation of institution policies or procedures relating to visiting, and restitution in accordance with ss. DOC 303.72 and 303.84. Restitution may be imposed in addition to or in lieu of any other minor penalty.

(3) Any violation of the following sections is a major offense:

Section	Title
DOC 303.12	Battery
DOC 303.13	Sexual assault—intercourse
DOC 303.14	Sexual assault—contact
DOC 303.18	Inciting a riot
DOC 303.19	Participating in a riot
DOC 303.22	Escape
DOC 303.23	Disguising identity
DOC 303.37	Arson
DOC 303.41	Counterfeiting and forgery
<u>DOC 303.43</u>	<u>Possession of intoxicant</u>
<u>DOC 303.44</u>	<u>Possession of drug paraphernalia</u>
DOC 303.45	Possession, manufacture and alteration of weapons
DOC 303.57	Misuse of prescription medication
DOC 303.59	Use of intoxicants

(4) An alleged violation of any section other than ones listed in sub. (3) may be treated as either a major or minor offense. The security director shall decide whether it should be treated as a major or minor offense, if the offense has not been disposed of summarily in accordance with s. DOC ~~303.74~~ 303.76. In deciding whether an alleged violation should be treated as a major or minor offense, the security director shall consider the following criteria and shall indicate in the record of disciplinary action the reason for the decision based on these criteria:

(4) (a) Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently;

(b) Whether the inmate has recently been warned about the same or similar conduct;

(c) Whether the alleged violation created a risk of serious disruption at the institution or in the community;

(d) Whether the alleged violation created a risk of serious injury to another person; ~~and~~

(5) Any conduct report containing at least one charge of a major offense shall be handled as a major offense, even if it also includes minor offenses. Once a conduct report is classified as a major offense, any dispositional decision may result in a major penalty.

SECTION 98. DOC 303.69 (1) to (4), (5) (title), and (7) to (9) are amended to read:

DOC 303.69 Major penalties: adjustment segregation. (1) Adjustment segregation may not exceed 8 consecutive days. An inmate who has served 8 consecutive days in adjustment segregation shall be released from adjustment segregation for one day and allowed any program segregation privileges under s. DOC 303.70 or any disciplinary separation privileges under s. DOC 303.73. ~~It~~ Adjustment segregation may only be imposed for a major offense by the adjustment committee or the hearing officer. Only one person shall be kept in each segregation cell, except when overcrowding ~~prevents it at the institution requires otherwise~~. Each cell must meet the following minimum standards:

(a) ~~clean~~ Clean mattress;

(b) ~~sufficient~~ Sufficient light to read by at least 12 hours per day;

(c) ~~sanitary~~ Sanitary toilet and sink;

(d) ~~and adequate~~ Adequate ventilation and heating.

(2) The following shall be provided promptly upon request for each inmate in adjustment segregation but need may not necessarily

be kept in the cell, as determined by the warden based on safety and security concerns.

(a) ~~adequate~~ Adequate clothing and bedding;

(b) a ~~A~~ toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use ~~his or her~~ the inmate's own such hygiene supplies;

(c) ~~paper~~ Paper, envelopes, stamps and pens. ~~(The cost of stamps may be deducted from the inmate's account);~~

(d) ~~and holy~~ Holy books.

(e) ~~The same diet as provided to the general population at the institution shall be provided~~ Meals, which shall be nutritionally adequate and usually approximate the general population meal.

(3) Inmates in adjustment segregation may have access to material pertaining to legal proceedings and law books or other books provided by the institution librarian in adjustment segregation.

(4) Inmates in adjustment segregation shall be permitted visitation and telephone calls in accordance with ch. DOC 309. The time period for no-contact visiting in adjustment segregation shall be consecutive to any other disposition for no-contact visiting and consecutive to no-contact visits in any other segregation status.

(5) CORRESPONDENCE.

(7) No property is allowed in the cell except that described in subs. (1), (2) and (3), and letters received while in adjustment segregation. ~~Smoking is forbidden. Each institution may establish specific procedures relating to talking. No yelling or whistling is permitted. Institutions may establish policy and procedures limiting smoking.~~

(8) Inmates in adjustment segregation may not leave their cells except for urgent medical or psychological attention, showers, visits and emergencies endangering their safety in the cell. They may be required to wear mechanical restraints, as defined in s. DOC ~~306.09~~ 303.09 (1), while outside their cells if the ~~superintendent or designee~~ warden determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(9) An inmate shall not earn extra good time while ~~he or she~~ the inmate is in adjustment segregation. Wages are not paid to inmates in adjustment segregation.

SECTION 99. DOC 303.69 (12) is created to read:

DOC 303.69 (12) **TIME SERVED.** (a) Adjustment segregation starts the day of the disposition unless the inmate is already in adjustment status. If the inmate is already in adjustment status, adjustment segregation is then consecutive to the current adjustment segregation being served and is concurrent to any other segregation or separation status being served. No more than eight consecutive days of adjustment can be served. At that point the inmate must be let out of adjustment for one day and allowed program segregation or disciplinary separation privileges that may apply.

(b) Program segregation in s. DOC 303.70 is concurrent to all segregation or disciplinary separation time. Program segregation starts the day of the disposition. When concurrent to disciplinary separation, the rules for program segregation apply.

(c) Disciplinary separation in s. DOC 303.73 is concurrent to all segregation statuses. When concurrent to other segregation statuses, the rules of the other statuses govern.

SECTION 100. DOC 303.70 (1), (2), (3) (a), and (b), (4), (5) (title), (8), (11), (12) (intro.), (12) (a) (intro.), (12) (a), (12) (b) (intro.), (12) (c) (intro.), (12) (c), (12) (d) (intro.), (12) (d), and (12) (d) 1. are amended to read:

DOC 303.70 Major penalties: program segregation. (1) Program segregation may not exceed the period specified in s. DOC 303.84. It may only be imposed for a major offense by the adjustment committee or the hearing officer. Only one person shall be kept in each segregation cell, unless overcrowding ~~prevents it at the institution requires otherwise~~. Each cell must meet the following minimum standards:

(a) ~~clean~~ Clean mattress;

(b) ~~sufficient~~ Sufficient light to read by at least 12 hours per day;

(c) ~~sanitary~~ Sanitary toilet and sink;

(d) ~~and adequate~~ Adequate ventilation and heating.

(2) The following shall be provided promptly upon request for each inmate in program segregation:

(a) ~~adequate~~ Adequate clothing and bedding;

(b) ~~a~~ A toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use ~~his or her~~ the inmate's own such hygiene supplies;

(c) ~~paper~~ Paper, envelopes, stamps and pens. ~~The cost of stamps may be deducted from the inmate's account;~~

(d) ~~and holy~~ Holy books.

~~The same diet as provided to the general population at the institution shall be provided~~ Meals, which shall be nutritionally adequate and usually approximate the general population meal.

(3) (a) Inmates in program segregation may have in their cells documents and other materials pertaining to legal proceedings as well as law books or other books provided by the institution librarian.

(3) (b) Inmates in program segregation may not have electronic equipment or typewriters in their cells except as permitted in accordance with written policy of the institution. Every institution shall have a written policy providing for incentives for inmates in program segregation to earn the privilege of having personal electronic equipment or typewriters in program segregation. The administrator shall approve each institution's policy before it takes effect to ensure that it is reasonable. ~~Each institution shall post its approved policy and implementation procedures within 30 days after January 1, 1985.~~

(4) Inmates in program segregation shall be permitted visitation and telephone calls in accordance with ch. DOC 309. The time period of no-contact visiting imposed as discipline shall be concurrent to controlled segregation status time and consecutive to any other segregation status time. No-contact shall be stayed while in program segregation.

(5) CORRESPONDENCE.

(8) Inmates in program segregation may not leave their cells except for medical or clinical attention, showers, visits, exercise and emergencies endangering their safety in the cell. They may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the ~~superintendent or designee~~ warden determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(11) ~~Smoking is permitted if no hazard is thereby cause.~~ Institutions may establish policy and procedures limiting smoking. Talking is permitted in a normal tone during approved times. No yelling or, whistling, is ~~or any other loud noises are~~ permitted.

(12) An inmate's status in program segregation may be reviewed at any time and ~~he or she~~ the inmate may be placed in the general population at any time by the ~~superintendent~~ warden. Such status must be reviewed every 30 days by the ~~superintendent~~ warden. Such review shall include a recommendation by the security director as to whether the inmate should remain in program segregation and an evaluation of the inmate by either the crisis intervention officer or the adjustment program supervisor, or both. In deciding whether an inmate should be removed from program segregation and placed in the general population, the ~~superintendent~~ warden shall consider:

(a) The offense, including all of the following:

1. Its nature and severity;
2. Mitigating factors;
3. Aggravating factors; ~~and,~~
4. Length of sentence to program segregation;

(b) Motivation and behavior of the inmate, including all of the following:

1. Attitude of inmate toward ~~himself or herself~~ self and others and changes in ~~his or her~~ the inmate's attitude;
2. Goals of the inmate;
3. Physical and mental health; ~~and,~~
4. Attempt to resolve emotional and mental disorders;

(c) Institutional adjustment, including all of the following:

1. Disciplinary records;
2. Program involvement;
3. Relationship to staff and inmates; ~~and,~~
4. Security problems created by release;

(d) Programs, including both of the following:

1. Social and clinical services available to help the inmate; ~~and,~~

SECTION 101. DOC 303.71 (1), (5) (title), (6) (b), (7) and (8) are amended to read:

DOC 303.71 Controlled segregation. (1) Any inmate in TLU or segregation of any kind who exhibits loud and seriously disruptive behavior or destructive behavior toward the contents of the cell or ~~himself or herself~~ the inmate or throws body fluids or bodily wastes or cell contents at staff may be put into controlled segregation upon order of the shift supervisor. No inmate may be placed in controlled segregation unless a conduct report is written for the conduct giving rise to the use of controlled segregation. The adjustment committee shall review the report to determine if disciplinary action is appropriate. Controlled segregation ~~normally lasts~~ may be ordered for not more than 72 hours for a single inmate, but the security director may extend the placement for uncontrollable behavior. Extensions shall be reviewed every 24 hours. When the behavior is brought under control, the inmate shall be removed from ~~this status~~ controlled segregation.

(5) CORRESPONDENCE.

(6) (b) Inmates in controlled segregation may not leave their cells except in emergencies endangering the inmate's safety in the cell or with permission from the security director or designee. ~~They~~ Inmates in controlled segregation may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the ~~superintendent or designee~~ warden determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(7) An inmate in controlled segregation shall earn compensation if ~~he or she~~ the inmate earned compensation in the previous status. If 1983 Wis. Act 528 does not apply to the inmate, ~~he or she~~ the inmate earns extra good time if ~~he or she~~ the inmate earned extra good time in the previous status.

(8) Inmates in controlled segregation shall be visually checked every half hour. A written record or log entry shall be made at each such interval noting the ~~emotional~~ condition of the inmate.

SECTION 102. DOC 303.72 (intro.), (3) and (5) are amended to read:

DOC 303.72 Minor penalties. Minor penalties in accordance with ss. DOC 303.68 and 303.84 shall include any of the following:

(3) Room and cell confinement may be imposed at any time for a ~~maximum of 10~~ 1 to 15 days. During the hours of confinement, the inmate may not leave ~~his or her~~ the inmate's quarters without specific permission. Permission may be granted for attendance at religious services, medical appointments, showers, and visits from outside persons, if these must occur during the hours of confinement. Any or all electronic equipment may be removed from an inmate's quarters if room confinement is imposed.

(5) Restitution is payment to the owner for the replacement or repair of stolen, destroyed and damaged property or for medical bills. Restitution may include escape expenses or any other expense caused by the inmate's actions whether intentional or reckless. State property for which restitution is ordered shall be valued at the cost of replacing the property. Other property for which restitution is ordered shall be valued at the cost of replacing or repairing such property, whichever is less. An inmate may be ordered to make full or partial restitution. Money may be withheld from earnings or taken from an inmate's account to satisfy the requirements to make restitution.

SECTION 103. DOC 303.72 (8) is created to read:

DOC 303.72 (8) FORFEITURES. Forfeitures of \$1 to \$5 in increments of \$1 may be imposed.

SECTION 104. DOC 303.73 is repealed and recreated to read:

DOC 303.73 Major penalties: disciplinary separation. (1) CONDITIONS. Disciplinary separation may not exceed the period specified in s. DOC 303.84. Disciplinary separation may only be

imposed for a major offense by the adjustment committee or the hearing officer. Only one person shall be kept in each segregation cell, unless overcrowding at the institution requires otherwise. Each cell shall meet the following minimum standards:

- (a) Clean mattress.
- (b) Sufficient light to read by at least 12 hours per day.
- (c) Sanitary toilet and sink.
- (d) Adequate ventilation and heating.

(2) NECESSITIES. The following shall be provided promptly upon request for each inmate in disciplinary separation:

- (a) Adequate clothing and bedding.
- (b) A toothbrush, toothpaste, soap, towel, face cloth and a small comb, unless the inmate is allowed to use the inmate's own hygiene supplies.
- (c) Paper, envelopes, stamps, pens and holy books. The cost of stamps may be deducted from the inmate's account.
- (d) The meal received shall be nutritionally adequate and usually approximate the general population meal.

(3) PROPERTY. Inmates in disciplinary separation may have in the inmate's cell documents and other materials pertaining to legal proceedings as well as law books or other books provided by the institution librarian.

(4) VISITS AND TELEPHONE CALLS. Inmates in disciplinary separation shall be permitted visitation and telephone calls in accordance with ch. DOC 309. No-contact visiting dispositions are consecutive.

(5) CORRESPONDENCE. Inmates in disciplinary separation may receive and send mail in accordance with ss. DOC 309.04 and 309.05 relating to mail.

(6) SHOWERS. Inmates in disciplinary separation shall be permitted to shower at least once every 4 days.

(7) SERVICES AND PROGRAMS. Social services, clinical services and program and recreation opportunities shall be provided as otherwise authorized by the security director. A program of exercise shall be provided for inmates in disciplinary separation.

(8) LEAVING CELL. Inmates in disciplinary separation may not leave their cells except for medical or clinical attention, showers, visits, exercise and emergencies endangering their safety in the cell. Inmates in disciplinary separation may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the warden determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(9) GOOD TIME AND PAY. Inmates shall continue to earn good time in disciplinary separation, but inmates may not earn compensation while in disciplinary separation.

(10) CANTEEN. Inmates in disciplinary separation may have approved items brought in from the canteen but may not go to the canteen in person.

(11) SPECIAL RULES. Institutions may establish policy and procedures limiting smoking. Talking is permitted in a normal tone during approved times. No yelling, whistling, or any other loud noises are permitted.

(12) REVIEW OF DISCIPLINARY SEPARATION. An inmate's status in disciplinary separation may be reviewed at any time and the inmate may be placed in the general population at any time by the warden. Disciplinary separation status shall be reviewed every 30 days by the warden. The review shall include a recommendation by the security director as to whether the inmate should remain in disciplinary separation and an evaluation of the inmate by either the crisis intervention officer or the adjustment program supervisor, or both. In deciding whether an inmate should be removed from disciplinary separation and placed in the general population, the warden shall consider all of the following:

- (a) The offense, including all of the following:
 1. Its nature and severity.
 2. Mitigating factors.

3. Aggravating factors.

4. Length of sentence to disciplinary separation.

(b) Motivation and behavior of the inmates, including all of the following:

1. Attitude toward inmate, others and changes in the inmate's attitude.
2. Goals of the inmate.
3. Physical and mental health.
4. Attempt to resolve emotional and mental disorders.

(c) Institutional adjustment, including all of the following:

1. Disciplinary record.
2. Program involvement.
3. Relationship to staff and inmates.
4. Security problems created by release.

(d) Programs, including both of the following:

1. Social and clinical services available to help the inmate.
2. Any programs available to help the inmate.

(13) TIME SERVED. Disciplinary separation is consecutive to adjustment time and is concurrent to program time. If disciplinary separation and program time are running concurrently, program time rules and penalties shall prevail. Disciplinary and program time may not be given together on the same conduct report.

SECTION 105. DOC 303.74 (2), (3), (5) (a) to (f), and (6) are amended to read:

DOC 303.74 (2) Before an inmate is summarily found guilty and punished, a staff member shall do the following:

(a) ~~Shall inform~~ Inform the inmate of the nature of the alleged infraction and the contemplated penalty; ~~and~~.

(b) ~~Shall inform~~ Inform the inmate that the incident may be handled summarily or that it may be handled through the formal disciplinary process.

(3) If the inmate agrees to summary disposition, the staff member shall inform the inmate of the punishment. This agreement is not appealable.

(5) (a) Reprimand;.

(b) Loss of a specific privilege for 1 to 15 days, except visits and mail;.

(c) ~~Two nights in room~~ Room confinement for 1 to 15 days;.

(d) Loss of recreation privilege for 1 to 15 days;.

(e) Extra duty beyond the normal work day; ~~or~~.

(f) Building confinement for 1 to 30 days.

(6) A record of dispositions made pursuant to this section shall be written on an appropriate form indicating that summary disposition has been made and approved by the ~~shift~~ security supervisor.

SECTION 106. DOC 303.74 (7) to (9) are created to read:

DOC 303.74 (7) FORFEITURES. Forfeitures may be imposed alone or with other penalties, both minor or major. Money may be withheld from earnings or taken from any money deposited in the inmate's general or trust account to satisfy the requirements to pay forfeitures. A forfeiture may be shown as a debt owing on an inmate account. Forfeitures may be imposed using the following schedule:

- | | |
|------------------------------------|-----------------|
| (a) First offense: | \$1 to \$5.00 |
| (b) Second offense: | \$6 to \$10.00 |
| (c) Third and subsequent offenses: | \$11 to \$15.00 |

(8) REFERRAL FOR PROGRAM REVIEW. If an inmate is found guilty of an offense, an inmate may be referred to program review to review the inmate's program assignment and custody classification.

(9) DISPOSAL OF CONTRABAND. Contraband may be disposed in any one of the following ways:

- (a) Destruction.
- (b) Sending out of the institution by a visitor to the institution.
- (c) Sending out of the institution by common carrier.

SECTION 107. DOC 303.75 (1), (2), (3), (4) and (6) are amended to read:

DOC 303.75 Hearing procedure for minor violations. (1) When an inmate is alleged to have committed a minor violation and the security director or designee has reviewed the conduct report pursuant to s. DOC 303.67 and the conduct report has not been disposed of summarily in accordance with s. DOC 303.74, a copy of the approved conduct report shall be given to the accused inmate. ~~The conduct report shall include the offense or offenses charged, the facts upon which the charges are based, the sources of information and the date of the hearing, and shall notify the inmate of the time of the hearing and the hearing may be conducted without the inmate being present if the inmate refuses to appear at the hearing.~~

(2) Except as provided in this subsection, the hearing may not be held until at least 2 working days after the inmate receives the approved conduct report, or later than 21 days after the inmate receives the approved conduct report. The inmate may request more time to prepare, and this request shall may be granted by the hearing officer ~~unless there is a good reason to deny the request~~ security director for good cause. The security director may extend the 21 day time period for good cause with notice to the inmate. An inmate may waive in writing the time limits provided in this section. Time shall be tolled for observation and control placements and for any full or partial day when the inmate is out of the institution on a temporary release order.

(3) The ~~superintendent~~ warden shall appoint one or more staff members to serve as hearing officers. Only persons who are eligible to serve on the adjustment committee may be appointed. A hearing officer with substantial involvement in the conduct report may not hold a hearing on that conduct report.

(4) At the hearing, a hearing officer shall review the conduct report and discuss it with the inmate. The inmate shall be provided with an opportunity to respond to the report and make a statement about the alleged violation. The hearing officer may question the inmate. The inmate has no right to a staff advocate, to confront witnesses or to have witnesses testify on ~~his or her~~ the inmate's behalf. If an inmate refuses to attend a hearing, the hearing may be conducted without the inmate being present.

(6) An inmate may appeal the disposition of a minor hearing within 10 days to the ~~superintendent~~ warden.

SECTION 108. DOC 303.76 (1), (3), (5), (6), and (7), are amended to read:

DOC 303.76 Hearing procedure for major violations. (1) When an inmate is alleged to have committed a major violation and the security director or designee has reviewed the conduct report pursuant to s. DOC 303.67, a copy of the approved conduct report shall be given to the inmate within 2 working days after its approval. The conduct report shall inform the inmate of all of the following:

(a) ~~the~~ The rules which ~~he or she~~ the inmate is alleged to have violated,

(b) ~~the~~ The potential penalties or other potential results that may be imposed, including but not limited to removal from work release, ~~and,~~

(c) ~~that he or she may exercise the~~ The right the inmate has to a due process hearing or ~~may to~~ waive this right in writing.

(d) ~~The inmate shall be informed that if he or she~~ If the inmate waives the right to a formal due process hearing, ~~he or she~~ the inmate will be given an informal hearing under s. DOC 303.75.

(e) ~~The inmate shall be informed that if~~ If a formal due process hearing is chosen, the inmate ~~may~~ shall be informed of all of the following:

1. ~~present~~ The inmate may present oral, written, documentary and physical evidence, and evidence from ~~voluntary eyewitnesses~~ witnesses in accordance with this section and s. DOC 303.81;

2. ~~that he or she has~~ The inmate has a right to the assistance of a staff advocate in accordance with this section and s. DOC 303.79;

3. ~~that the~~ The adjustment committee may permit direct questions or require the inmate or ~~his or her~~ the inmate's advocate to

submit questions to the adjustment committee to be asked of the witness;

4. ~~that The adjustment committee may prohibit~~ repetitive, disrespectful and irrelevant questions are ~~forbidden; and,~~

5. ~~that the~~ The inmate may appeal the finding and disposition of the adjustment committee in accordance with sub. (7).

6. ~~The inmate shall also be informed that if~~ If he or she ~~the inmate~~ refuses to attend a hearing, the hearing may be conducted without the inmate being present.

(3) A due process hearing shall be held no sooner than 2 working days or later than 21 days after the inmate receives a copy of the conduct report and hearing notice. An inmate may waive these time requirements in writing if the security director agrees to the waiver. Time shall be tolled for observation and control placements and for any full or partial day when the inmate is out of the institution on a temporary release order. The inmate may request additional time to prepare for the hearing, and the security director shall may grant the request ~~unless there is a good reason to deny it for good cause.~~ The security director may extend the 21 day time period for good cause with notice to the inmate.

(5) The adjustment committee, as defined in s. DOC 303.82 shall conduct the due process hearing. If an inmate refuses to attend the hearing or disrupts the hearing, the hearing may be conducted without the inmate being present. At a due process hearing, the adjustment committee:

(a) ~~the conduct report shall be read~~ Shall read the conduct report aloud and,

(b) Shall provide all witnesses who are requested and permitted to speak for or against the accused, including the accused ~~himself or herself~~ inmate and the staff member who wrote the conduct report, ~~shall have a chance to speak.~~

(c) ~~The adjustment committee may~~ May require that physical evidence be offered.

(d) ~~The adjustment committee may~~ May permit direct questions or require the inmate or ~~his or her~~ advocate the inmate's advocate to submit questions to the adjustment committee to be asked of the witness.

(e) ~~Repetitive~~ May prohibit repetitive, disrespectful or irrelevant questions are ~~forbidden.~~

(6) After the hearing the adjustment committee:

(a) ~~shall~~ Shall deliberate in private, ~~considering~~ consider only the evidence presented to it and the inmate's records.

(b) ~~The institution is required to~~ Shall establish guilt by a preponderance of the evidence.

(c) ~~The adjustment committee may~~ May find the inmate guilty or not guilty. A committee of 3 may find the inmate guilty if at least 2 of the 3 members find by a preponderance of the evidence that he or she is guilty, and if 2 agree upon a sentence, may sentence the inmate. A committee of 2 or of one may find the inmate guilty if the committee members unanimously find by a preponderance of the evidence that the inmate is guilty and may sentence the inmate if they are unanimous as to the sentence.

(d) ~~If a sentence is not agreed upon, the matter may be referred~~ May refer the matter to the superintendent ~~warden if the adjustment committee members do not agree on a sentence.~~

(e) ~~The committee shall then recall the accused and advocate, if any, and announce its decision or the decision of the superintendent.~~ The inmate shall be informed of the decision. A postponed or delayed decision may be communicated to the inmate.

(f) ~~The accused and his or her~~ Provide the accused inmate and the inmate's advocate, if any, shall each receive a written copy of the decision with adequate reasons for the decision.

(7) (a) Any time within 10 days after ~~either~~ a due process hearing or after the inmate receives a copy of the decision ~~whichever is later~~, an inmate who is found guilty may appeal the decision or the sentence, or both, to the ~~superintendent~~ warden.

(b) The ~~superintendent~~ warden shall review all records and forms pertaining to the appeal and make his or her decision within 10 days following receipt of the request.

(c) The ~~superintendent's~~ warden's decision shall be ~~to one of the following~~:

1. Affirm the adjustment committee's decision and the sentence;
2. Affirm or modify all or part of the adjustment committee's decision but reduce the sentence in type or quality; or sentence.
3. Reverse the adjustment committee's decision, in whole or in part. In this case if the decision is reversed in whole, all records of the decision shall be removed from all offender-based files. If the decision is reversed in part, all records of the portion of the decision reversed shall be removed from all offender-based files. Records may be kept for statistical purposes only;
4. Return the case to the adjustment committee for further consideration or to complete or correct the record.

(d) The ~~superintendent's~~ warden's decision is final.

SECTION 109. DOC 303.76 (7) (e) is created to read:

DOC 303.76 (7) (e) The warden may at any time review the conduct report and act on it unilaterally as if there was an appeal.

SECTION 110. DOC 303.78 is repealed and recreated to read:

DOC 303.78 Due process: advocates. (1) (a) At each institution, the warden may designate or hire staff members to serve as advocates for inmates in disciplinary hearings at the institution, or staff members may volunteer to serve as advocates.

(b) If an inmate objects to the assignment of a particular advocate because the advocate has a known and demonstrated conflict of interest in the case, the warden shall assign a different staff member to serve as the inmate's advocate.

(2) The advocate's purpose is to help the accused inmate to understand the charges against the inmate and to help in the preparation and presentation of any defense the inmate has, including gathering evidence and testimony, and preparing the inmate's own statement. The advocate may speak on behalf of the accused inmate at a disciplinary hearing or may help the inmate prepare to speak.

(3) A training program for advocates should be conducted as often as possible. The training program should cover all of the following subjects:

- (a) Proper role of the advocate.
- (b) Techniques of interviewing the accused.
- (c) Conduct covered and not covered in each disciplinary rule including the significance of lesser included offenses.
- (d) Techniques of factual investigation.
- (e) The elements of violations in the rules.
- (f) Defenses.

SECTION 111. DOC 303.81 (1), (2), (3) (intro.), and (3) (a) are amended to read:

DOC 303.81 Due process hearing: witnesses. (1) A request by the inmate for witnesses to appear at the major violation hearing, including requests for the appearance of the staff member who signed the conduct report, may be made by the accused to the advocate who shall deliver the request to the security office. Except for good cause, an inmate may present no more than 2 witnesses in addition to the reporting staff member or members. If an inmate does not have an advocate, the request shall be sent directly to the security office. This request shall be made within 2 days of the service of notice when no advocate is assigned and with the initial contact by the advocate when an advocate is assigned.

(2) After all witness requests have been received, the ~~hearing officer~~ security director shall review them ~~and do any investigation necessary~~ to determine whether the witnesses should be called. The hearing officer may only call witnesses who possess relevant information. ~~If a witness refuses to appear, the hearing officer shall determine if the refusal is justified. If the refusal is justified, the hearing officer shall note on the record the reason for the witness' refusal to appear.~~

(3) Witnesses requested by the accused who are staff or inmates shall attend the disciplinary hearing unless one of the following exist:

- (a) There is a significant risk of bodily harm to the witness if ~~he or she~~ the witness testifies;

SECTION 112. DOC 303.81 (3) (b) is repealed.

SECTION 113. DOC 303.81 (3) (c) is renumbered DOC 303.81 (3) (b) and amended to read:

DOC 303.81 (3) (b) The testimony is irrelevant to the question of guilt or innocence;

SECTION 114. DOC 303.81 (3) (d) is renumbered DOC 303.81 (3) (c) and amended to read:

DOC 303.80 (3) (c) The testimony is merely cumulative of other evidence and would unduly prolong the hearing;

SECTION 115. DOC 303.81 (3) (e) is renumbered DOC 303.81 (3) (d).

SECTION 116. DOC 303.81 (4), (5), and (7), are amended to read:

DOC 303.81 (4) If an inmate witness will be unavailable due to hospitalization, transfer or release or if a staff member witness, who may be the officer who reported the rule violation, will be unavailable due to illness, no longer being employed at the location, being on vacation or being on a different shift, but there is no other reason to exclude the witness's testimony under sub. (3), then the ~~hearing officer~~ staff member shall attempt to get a signed statement from the witness to be used at the disciplinary hearing.

(5) If a witness's testimony would be relevant and useful to the adjustment committee ~~but if the witness does not wish to testify, or and~~ if testifying would pose a significant risk of bodily harm to the witness, the hearing officer may attempt to get a signed statement to be used at the disciplinary hearing.

(7) After determining which witnesses will be called for the accused inmate, the hearing officer shall notify the inmate of the decision in writing and schedule a time for a hearing when all of the following people can be present:

- (a) Adjustment committee members;
- (b) Advocate, if any;
- (c) Officer who wrote the conduct report, if requested.
- (d) Other witnesses against the accused inmate (, if any);
- (e) Accused inmate; and,
- (f) Witnesses for accused inmate (, if any).

SECTION 117. DOC 303.81 (7m) is renumbered DOC 303.81 (8) and is amended to read:

DOC 303.81 (8) In the case of inmate witnesses and the accused, an attempt ~~should~~ shall be made to avoid conflict with off ground activities, but these persons may be required to attend the hearing even if it conflicts with other activities.

SECTION 118. DOC 303.81 (9) is repealed.

SECTION 119. DOC 303.82 (1), (2), and (4) are amended to read:

DOC 303.82 Adjustment committee. (1) Due process disciplinary hearings shall be conducted by a an adjustment committee of one, 2 or 3 staff members appointed by the superintendent warden. Persons eligible to serve on an adjustment committee are: the superintendent warden, assistant superintendents warden, supervisors, correctional officers, social workers, and any other equally responsible staff members. Efforts shall be made to place staff from diverse backgrounds on the multi-member adjustment committee. At least one member of every adjustment committee shall be a supervisor.

(2) No person who has personally observed or been a part of an incident which is the subject of a hearing may serve on the committee for that hearing. Committee members ~~should find out~~ shall determine the subject matter of the hearing in advance in order to allow replacement of committee members if necessary and thereby avoid the necessity of postponing the hearing. The security director who reviews the conduct report or classifies the offense, as required by ~~ss. DOC 303.67 and 303.68 is not involved in the incident by reviewing the conduct report or classifying the offense to the extent that he or she is automatically disqualified from being on the adjustment committee.~~

(4) When a single hearing officer is sitting on the adjustment committee pursuant to sub. (1), or after the waiver of due process, ~~he~~

~~or she the hearing officer~~ has the same authority as given the adjustment committee under this chapter.

SECTION 120. DOC 303.83 (intro.) and (1) to (10) are amended to read:

DOC 303.83 Sentencing considerations. In deciding the sentence for a violation or group of violations, the supervisor making summary disposition or the adjustment committee or hearing officer who is holding the hearing ~~shall~~ may consider any of the following:

(1) The inmate's overall disciplinary record, especially during the last year;

(2) Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently;

(3) Whether the alleged violation created a risk of serious disruption at the institution or in the community;

(4) Whether the alleged violation created a risk of serious injury to another person;

(5) The value of the property involved, if the alleged violation was actual or attempted damage to property, misuse of property, possession of money, gambling, unauthorized transfer of property, soliciting staff or theft;

(6) Whether the inmate was actually aware that ~~he or she~~ the inmate was committing a crime or offense at the time of the offense;

(7) The motivation for the offense;

(8) The inmate's attitude toward the offense and toward the victim, if any;

(9) Mitigating factors, such as coercion, family difficulties which may have created anxiety and ~~the like;~~ any special circumstances.

(10) Whether the offense created a risk to the security of the institution, inmates, staff or the community; ~~and.~~

SECTION 121. DOC 303.83 (11) is repealed.

SECTION 122. DOC 303.84 (1) (a), (b), (c), (d), (g), (h), (i), (j), and (k) are amended to read:

DOC 303.84 (1) (a) Reprimand;

(b) Loss of recreational privilege for 1 to 30 days;

(c) Room confinement for 1 to ~~40~~ 15 days; as a minor penalty or 16 to 30 days as a major penalty.

(d) Building confinement for 1 to 30 days;

(g) Adjustment segregation for 1 to 8 days;

(h) Extra duty without pay for 1 to 10 days;

(i) Program segregation or disciplinary separation for a specific term of 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330 or 360 days;

(j) Loss of good time for an inmate whose crime was committed before June 1, 1984, and who did not choose to have 1983 Wis. Act 528 apply to ~~him or her~~ the inmate, or extension of the mandatory release date for an inmate whose crime was committed on or after June 1, 1984, and for other inmates who chose to have 1983 Wis. Act 528 apply to them;

(k) Restitution. Restitution includes costs incurred during escapes and any other costs intentionally or recklessly caused by the inmate's conduct and actions or fraudulent behavior. Restitution for state property shall be the replacement cost.

SECTION 123. DOC 303.84 (1) (L) is created to read:

DOC 303.84 (1) (L) Forfeitures. Forfeitures may be imposed with other penalties both minor or major. When used as a minor penalty, only the \$1.00 to \$5.00 amount listed in the schedule of forfeitures may be used. Money may be withheld from earnings or taken from an inmate's account to satisfy the requirements to pay forfeitures. Forfeitures may be imposed using the following schedule:

First offense: \$1 to \$5.00

Second offense: \$6 to \$10.00

Third and subsequent offenses: \$11 to \$15.00

SECTION 124. DOC 303.84 (2) (a) is amended to read:

DOC 303.84 (2) (a) Adjustment segregation, program segregation, disciplinary separation and loss of good time or extension of the mandatory release date, fines of \$6 to \$15 or 16 to 30 days in room confinement whichever is applicable, may be imposed for a single major offense. At one hearing, the maximum penalty is the most severe penalty the inmate could receive for any single offense of which ~~he or she~~ the inmate is found guilty. The duration of a penalty may not exceed the duration shown in Table 303.84.

SECTION 125. DOC 303.84 (2) (f) and (g) are created to read:

DOC 303.84 (2) (f) TLU time may not be considered as time served.

(g) A guilty finding on any conduct report designated major for any reason in this chapter may result in a major penalty.

SECTION 126. DOC 303.84 (table) is repealed and recreated to read:

TABLE DOC 303.84

SCHEDULE OF PENALTIES
(Maximum in days)

	Adjustment Segregation	Program Segregation	Good Time Loss	Extension of Mandatory Release Date Under 1983 Wisconsin Act 528	Disciplinary Separation
Offenses against bodily security					
303.12 Battery	8	360	20	40	360
303.13 Sexual assault—intercourse	8	360	20	40	360
303.14 Sexual assault—contact	8	360	20	40	360
303.15 Sexual conduct	8	180	10	20	180
303.16 Threats	5	180	10	20	180
303.17 Fighting	8	360	20	40	360
Offenses against institutional security					
303.18 Inciting a riot	8	360	20	40	360
303.19 Participating in a riot	6	360	10	20	360
303.20 Group resistance and petitions	4	180	10	20	180
303.21 Conspiracy		Maximum for	completed	offense	
303.22 Escape	8	360	20	40	360
303.23 Disguising identity	8	180	20	40	180
Offenses against order					
303.24 Disobeying orders	6	180	10	20	180
303.25 Disrespect	8	180	10	20	180
303.26 Soliciting staff	8	360	20	40	180
303.27 Lying	5	180	10	20	180
303.271 Lying about staff	8	360	20	40	180
303.28 Disruptive conduct	5	360	10	20	180
303.29 Talking	4	60	0	0	60
303.30 Unauthorized forms of communication	5	60	10	20	60
303.31 False names and titles	4	180	0	0	180
303.32 Enterprises and fraud	6	120	5	10	120
303.33 Attire	4	60	0	0	60
Offenses against property					
303.34 Theft	8	360	20	40	360
303.35 Damage or alteration of property	8	180	15	30	180
303.36 Misuse of state property	4	60	0	0	60
303.37 Arson	8	360	20	40	360
303.38 Causing an explosion or fire	6	180	15	30	180
303.39 Creating a hazard	6	120	10	20	120

303.40	Unauthorized transfer of property	5	120	0	0	120
303.41	Counterfeiting and forgery	8	360	20	40	360
Contraband offenses						
303.42	Possession of money	8	360	20	40	360
303.43	Possession of intoxicants	8	360	20	40	360
303.44	Possession of drug paraphernalia	8	360	20	40	360
303.45	Possession, manufacture and alteration of weapons	8	360	20	40	360
303.46	Possession of excess smoking materials	4	60	10	20	60
303.47	Possession of contraband--miscellaneous	6	120	10	20	120
303.48	Unauthorized use of the mail	8	360	20	40	260
Movement offenses						
303.49	Punctuality and attendance	5	120	5	10	120
303.50	Loitering	4	120	5	10	120
303.51	Leaving assigned area	5	120	10	20	120
303.52	Being in unassigned area	5	120	10	20	120
303.53	Entry of another inmate's quarters	8	360	20	40	360
Offenses against safety and health						
303.54	Improper storage	4	60	5	10	60
303.55	Dirty quarters	4	60	5	10	60
303.56	Poor grooming	4	60	0	0	60
303.57	Misuse of prescription medication	8	360	20	40	360
303.58	Disfigurement	5	120	10	20	120
Miscellaneous						
303.59	Use of intoxicants	8	360	20	40	360
303.60	Gambling	4	180	5	10	180
303.61	Refusal to work or attend school	4	60	5	10	60
303.62	Inadequate work or study performance	4	60	5	10	60
303.63	Violation of institutional policies and procedures	6	180	10	20	180
303.64	Violations of leave	8	360	20	40	360
303.06	Attempt		Maximum for	completed	offense	
303.07	Aiding and abetting		Maximum for	completed	offense	

SECTION 127. DOC 303.84 (2) (d) is amended to read:

DOC 303.84 (2) (d) Restitution or a fine may be imposed in addition to any other penalty.

SECTION 128. DOC 303.85 (1) (a) and (b) and (2) are amended to read:

DOC 303.85 (1) (a) If the inmate was found guilty by summary disposition procedure; ~~or~~.

(b) If the inmate was found guilty by a hearing officer or an adjustment committee. Records must be removed if an appeal is successful except a conduct report entry may remain on a warning card as it still constitutes a warning.

(2) Records of alleged disciplinary infractions which have been dismissed or in which the inmate was found not guilty may be kept for statistical purposes, but they may not be considered in making program assignment, transfer, or parole release decisions, nor may they be included in any inmate's case record except that a conduct report may remain on a warning card as it constitutes a warning that the conduct specified in the conduct report is a violation.

SECTION 129. DOC 303.86 (1) (b) and (Note), (2) (b) 1. and 2., (4) (intro.), (4) (a) and (5) are amended to read:

DOC 303.86 (1) (b) Evidence is relevant if that evidence makes it appear more likely or less likely that the inmate committed the offense of which ~~he or she~~ the inmate is accused.

Note: For example: an inmate is accused of threatening another inmate. Testimony that the accused inmate and the other inmate had a loud argument the day before is relevant. It indicates a possible motive for a threat and makes it appear more likely that a threat occurred. An officer testifies that the accused inmate has lied to ~~him or her~~ the officer on previous occasions. This is relevant if the testimony of the accused inmate varies from the conduct report.

(2) (b) 1. The evidence is not reliable.

Note: For example: opinions which are not supported by factual observation; hearsay ~~or~~ (statements made outside of the hearing); reputation of the witness; ~~or~~.

2. The evidence, even if true, would be of marginal relevance.

Note: For example: evidence of prior acts by the accused inmate or a witness, to show that ~~he or she~~ the inmate is repeating a pattern; ~~or~~.

(4) If a witness refuses to testify in person and if the committee finds that testifying would pose a significant risk of bodily harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity or a signed statement from a staff member getting the statement from that witness. The contents of the statement shall be revealed to the accused inmate, though the statement may be edited to avoid revealing the identity of the witness. The committee may question the witnesses, if they are otherwise available. Two anonymous statements by different persons may be used to corroborate each other. A statement can be corroborated in either of the following ways:

(4) (a) By other evidence which substantially corroborates the facts alleged in the statement such as, eyewitness account by a staff member or circumstantial evidence; ~~or~~.

(5) After disposition has been reached by the adjustment committee, and if a finding of guilt results, restricted informant material shall then be forwarded to the security office for retention in the restricted security department file ~~with all other copies of the entire hearing results.~~

Note: DOC 303.01:

Create sentence #1, paragraph #1 to read: These rules apply to all inmates in the legal custody of the department regardless of whether the inmate is housed in a prison, jail, half-way house, or any other facility.

Delete paragraphs 2, 3, 4 and 6.

Delete all sentences beginning with 2, paragraph 7.

Delete paragraphs 8, 9, 10, 11, 12, 13, 14, 15 and 16.

Note: DOC 303.03:

Delete paragraph 5.

Note: DOC 303.04:

Delete paragraph 9.

Note: DOC 303.06:

Delete paragraph 3.

Note: DOC 303.07:

Delete paragraphs 2 and 7.

Note: DOC 303.08:

Delete paragraph 2.

Amend paragraph 3 to read: An inmate is not culpable for violating an order unless the inmate is aware of the order, or should have been aware of it because it was posted at the time of the offense and the inmate had had an opportunity to read it. This section...

Note: DOC 303.09:

Delete sentence 2, paragraph 1.

Repeal and recreate paragraph 2 to read:

Due process and fundamental fairness require that inmates be given notice of the rules they are expected to follow. Major changes which require written notice to inmates include, an additional offense, a change in process or any change affecting MR date. In addition, awareness and understanding of the rules and of the sanctions for breaking them should increase compliance with them.

Note: DOC 303.11:

Repeal and recreate paragraph 2 to read:

Placement in TLU does not affect MR.

Note: DOC 303.12:

Delete paragraphs 1 and 2.

Note: DOC 303.13:

Delete sentences 1 and 2, paragraph 1.

Delete paragraph 2.

Note: DOC 303.14:

Delete paragraph 1.

Note: DOC 303.15:

Delete paragraphs 1 and 3.

Note: DOC 303.16:

Delete sentence 2, paragraph 1.

Delete sentences 1, 2, and 3, paragraph 2.

Amend sentence 4, paragraph 2 to read:

~~Therefore, this~~ This section has been....

Note: DOC 303.18:

Delete sentences 1 and 4, paragraph 1.

Amend sentence 2, paragraph 1 to read:

In order that the record of an inmate ~~should~~ more accurately reflect the seriousness of his or her acts, there are ~~now~~ three distinct offenses.

Note: DOC 303.20:

Delete sentence 1, paragraph 2.

Note: DOC 303.22:

Delete sentence 2, paragraph 1.

Delete paragraph 2.

Amend paragraph 3 to read:

~~The only change in that now, if~~ If an inmate is off grounds on work or study release or on furlough, mere...

Note: DOC 303.23:

Delete paragraph 5.

Note: DOC 303.25:

Delete the last sentence.

Note: DOC 303.26:

Delete sentences 4 and 5 of paragraph 1 and paragraph 2.

Note: DOC 303.27:

Delete sentence 4, paragraph 1 and paragraph 2.

Note: DOC 303.28:

Delete paragraph 3.

Note: DOC 303.29:

Amend paragraph 1, add as the last sentence:

This section merely provides notice that policies on talking do exist and are posted.

Delete paragraph 2.

Note: DOC 303.30:

Delete paragraph 2.

Note: DOC 303.31:

Delete paragraph 2.

Note: DOC 303.32:

Delete paragraph 2.

Note: DOC 303.33:

Delete paragraph 4.

Note: DOC 303.34:

Delete sentence 2 of paragraph 2.

Note: DOC 303.35:

Delete sentences 3 and 4 of paragraph 1.

Note: DOC 303.37:

Delete sentence 6 paragraph 1.

Note: DOC 303.38:

Delete paragraph 2.

Note: DOC 303.39:

Delete paragraph 2.

Note: DOC 303.40:

Delete paragraph 3.

Delete sentence 1 paragraph 5:

Amend sentence 5 paragraph 5 to read:

Misuse of state or federal property...

Note: DOC 303.41:

Delete paragraph 2.

Note: DOC 303.49 to 303.52:

Delete paragraph 2.

Note: DOC 303.58:

Delete paragraph 4.

Note: DOC 303.60:

Delete paragraph 5.

Note: DOC 303.62:

Delete paragraph 4.

Note: DOC 303.631:

Delete.

Note: DOC 303.64:

Delete paragraphs 2, 3, 4, 7, 8, 9, 10, and 11.

Note: DOC 303.65:

Delete paragraph 2.

Note: DOC 303.67:

Delete sentence 4 paragraph 1.

Note: DOC 303.69:

Delete sentence 1 paragraph 1.

Note: DOC 303.70.

Delete sentence 1 paragraph 1.

Note: DOC 303.72

Create paragraph #2 to read:

An inmate may be assessed a fine in lieu of or in conjunction with any other minor or major penalty. The purpose of a fine is to permit an additional sanction that can be used to enhance the significance of the offense. A fine may be an important aspect of inmate discipline in the minimum security correctional centers as they lack the ability

to impose a significant number of other penalties. Monies collected shall be turned over to the state's general fund.

Note: DOC 303.73 is repealed and recreated to read:

Note: DOC 303.73. DOC 303.73 provides for a new penalty—disciplinary separation. Disciplinary separation is being added to the major penalty selection as an alternative to program segregation. The difference is it is less punitive for the first time offender or the offender who normally follows the rules. There is not an automatic extension of mandatory release date with disciplinary separation. Program segregation requires an extension of one day for every 2 days served.

Note: DOC 303.75:

Repeal and recreate paragraph #3 to read:

The 21-day time limit is not intended to be jurisdictional in nature. This provision specifically overrules *State ex rel Jones v. Franklin*, 151 Wis. 2d 419, 444 N.W. 2d 738 (Ct. App. 1989).

Note: DOC 303.76:

Amend sentence 7 paragraph 4 to read:

...See s. DOC ~~303.75~~ 303.77 and note.

Add the following to paragraph 4:

Failure to hold the hearing within the 21-day time limit is not intended to deprive the adjustment committee of competency to proceed with the hearing. This provision specifically overrules *State ex rel Jones v. Franklin*, 151 Wis. 2d 419, 444 N.W. 2d 738 (Ct. App. 1989).

Amend sentence 3 paragraph 9 to read:

...~~camp~~ center system...

Delete sentences 3, 4, and 5 paragraph 14.

Add sentence 4 to paragraph 17 to read:

The hearing requirements do not prevent the use of telephone technology for holding the hearing.

Note: DOC 303.78:

Repeal and recreate to read:

Note: DOC 303.78. DOC 303.78 allows the institution to assign advocates and to regulate their caseloads. The choice of an advocate, however, is not the inmate's constitutional right. If an inmate objects to the assignment of a particular advocate because that advocate has a known and demonstrable conflict of interest in the case, the institution should assign a different advocate to the inmate. An inmate has no due process or other right to know the procedure by which a particular advocate is selected in a particular case.

Note: DOC 303.81:

Amend sentence 1 paragraph 2 to read: This new rule ...

Note: DOC 303.82:

Delete paragraph 2 and recreate to read:

There are 2 principal reasons for the use of one and 2 member committees. Some correctional centers have few staff members. To provide a 3 person committee and an advocate and to prevent the complainant from being one of these people is difficult. Further, during the hearing the center continues to need supervision. The conflict between the desire to have due process hearings at the centers and limited resources is resolved by permitting smaller committees. See s. DOC 303.86, Evidence, for the circumstances under which the adjustment committee can consider such a statement without revealing the name of the witness.

Note: DOC 303.84:

Amend sentence 2 paragraph 3 to read:

...30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330 and...

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

Chapter DOC 303 is the administrative rule relating to inmate conduct, inmate discipline and procedures for the imposition of discipline. This rule has not been updated since it was created

17 years ago. This revision updates language in the original rule, amends the existing rule to add additional offenses for which inmates may be disciplined and creates a new penalty—disciplinary separation—as an alternative to program segregation.

The revised rule is intended to clarify procedures related to disciplinary actions and, with the creation of disciplinary separation, to allow more efficient management of segregation cells. In each case, the proposed rule may result in more effective allocation of DOC staff time. In 1996, inmates filed a total of 294 lawsuits arising from disciplinary actions. Each lawsuit filed requires the use of DOC staff time to collect information as part of a court record. It is anticipated that the proposed revised rule clarifying procedures related to disciplinary actions may result in fewer lawsuits filed or more lawsuits resolved earlier.

The creation of disciplinary separation will allow more efficient management of segregation cells and use of DOC staff time.

The revised rule also amends provisions relating to the cost to an inmate for a confirmatory urinalysis test, from payment of half the cost of the test to the full cost of the test. In fiscal year 1996, 195 confirmatory tests were taken at a cost of \$25 each. Assuming no change in the number or cost of tests taken, this provision would result in a savings of approximately \$2,500 annually.

This revised rule also creates provisions assessing monetary forfeitures by inmates ranging from \$1 to \$15 as part of certain disciplinary penalties. The amount of state revenue generated as a result of these provisions cannot currently be estimated.

Contact Person

Deborah Rychlowski (608) 266-8426
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, WI 53707-7925

If you are hearing- or visually-impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written Comments

Written comments on the proposed rules received at the above address no later than **August 13, 1997**, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing

Psychology Examining Board

Notice is hereby given that pursuant to authority vested in the Psychology Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 455.065, Stats., and interpreting s. 455.065, Stats., the Psychology Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. Psy 4.02 (4) (c); and to amend s. Psy 4.02 (6), relating to continuing education.

Hearing Information

July 25, 1997
Friday
10:00 a.m.

Room 179A
1400 East Washington Ave.
MADISON, WI

Written Comments

Interested people are invited to present information at the hearing. People appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts,

opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Dept. of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **August 4, 1997** to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 455.065

Statute interpreted: s. 455.065

In this proposed rule-making order, the Psychology Examining Board amends s. Psy 4.02 to limit the number of continuing education hours that a psychologist may earn for self-developed continuing education programs and uncompensated evaluation assistance services. The Board determined to allow no more than 20 hours of continuing education credit per self-developed programs or for uncompensated evaluation assisted services.

Text of Rule

SECTION 1. Psy 4.02 (4) (c) is repealed.

SECTION 2. Psy 4.02 (6) is amended to read:

Psy 4.02 (6) **LIMITATION ON CREDIT.** The board may grant no more than 20 hours of continuing education credit per biennium for self-developed continuing education programs, no more than 20 hours of credit for uncompensated evaluation assistance services, and no more than 20 hours of credit for any combination of self-developed continuing education programs and uncompensated evaluation assistance services, and no more than 20 hours of credit within any specific continuing education program.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules
Dept. of Regulation & Licensing
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearing

Department of Transportation

Notice is hereby given that pursuant to s. 110.06(2), Stats., interpreting s. 110.06(2), Stats., the Department of Transportation will hold a public hearing on **Tuesday, August 26, 1997 at the Hill Farms State Transportation Building, Room 551, 4802 Sheboygan Avenue, Madison, WI, at 9:00 AM**, to consider the emergency rule amendment of chapter Trans 300, Wis. Adm. Code, relating to the transportation of school children.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 110.06(2)

STATUTE INTERPRETED: s. 110.06(2)

General Summary of Emergency Rule. Chapter Trans 300 regulates the transportation of school children in Wisconsin. Currently, this chapter has specific requirements for the thickness of metal used in the school bus manufacturing process, specifically, construction of the floor and rub rails. The Department proposes to allow alternative school bus construction material. To keep the gross vehicle weight rating (GVWR) at or below 10,000 lbs., the revision would allow "other metal or material with strength at least equivalent to all-steel as certified by the bus body manufacturer." Without the proposed changes for the 10,000 lb. GVWR or less school buses, schools will start using alternative vehicles (production vans) because

of the unavailability of the smaller school buses built to the safer school bus standards.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally-recognized tribes or bands. The amendments to this rule will allow bus operators to purchase the smaller school buses needed for the full school year. There will be no cost increase to the Department to inspect these buses.

Initial Regulatory Flexibility Analysis

This proposed rule will have no adverse impact on small businesses.

Copies of Rule and Contact Person

Copies of this emergency rule are available without cost upon request by writing to Frieda Andreas, Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI 53712, or by calling (608) 266-6936. Alternate formats of the proposed rule will be provided to individuals at their request.

*NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF
EACH HOUSE OF THE LEGISLATURE, UNDER S. 227.19, STATS.*

Please check the Bulletin of Proceedings for further information on a particular rule.

Corrections (CR 96-180):

Ch. DOC 308 – Relating to the administrative confinement of inmates.

Natural Resources (CR 96-188):

SS. NR 120.14 and 120.18 – Relating to the nonpoint source pollution abatement program.

Natural Resources (CR 97-15):

Chs. NR 20 and 26 – Relating to sport fishing and fish refuges.

Natural Resources (CR 97-17):

Ch. NR 809 – Relating to safe drinking water standards.

Natural Resources (CR 97-18):

Ch. NR 10 and ss. NR 11.032 and 19.13 – Relating to hunting and trapping.

Natural Resources (CR 97-19):

Ch. NR 10 and ss. NR 15.015 and 15.022 – Relating to hunting and trapping.

Revenue (CR 97-44):

S. Tax 12.065 (2) (c) and (5) (a) 2. – Relating to continuing education requirements for assessors.

Revenue (CR 97-46):

S. Tax 11.66 (2) (intro.) and (5) – Relating to telecommunications services.

Revenue (CR 97-53):

Chs. ATCP 53 and Tax 53 – Relating to changing the agency acronym to reflect the program transfer from the Department of Agriculture, Trade and Consumer Protection to the Department of Revenue and to increase plat review fees to cover all of the current costs of activities and services provided by the Department.

Workforce Development (CR 96-151):

Chs. ILHR 301 and DWD 301 – Relating to fee changes, penalty fee assessments and corrective amendments to the migrant labor code.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.

Corrections (CR 96-105):

An order affecting ch. DOC 325, relating to the temporary release under supervision of an inmate.
Effective 08-01-97.

Insurance, Commissioner of (CR 96-182):

An order creating ch. Ins 23, relating to minimum standards for life insurance policies sold to fund prearranged funeral plans.
Effective 08-01-97.

Natural Resources (CR 96-148):

An order affecting chs. NR 102, 105, 106 and 207, relating to surface water quality standards, criteria and their implementation procedures.
Effective 09-01-97.

Public Service Commission (CR 97-10):

An order repealing and recreating ch. PSC 114, relating to revisions of the state electrical code, volume 1, concerning electric safety.
Effective 10-01-97.

PUBLIC NOTICE

Public Notice

Notice of Draft Environmental Impact Statement

Department of Commerce (Private Onsite Wastewater Treatment Systems and Sanitation)

Notice is hereby given that the Department of Commerce has prepared a draft environmental impact statement (DEIS) on the proposed chapter Comm 83 and related rules (Chs. Comm 85 and 91), concerning regulation of private onsite wastewater treatment systems.

Copies of DEIS and Contact People

A copy of the draft environmental impact statement (DEIS) to be considered may be obtained from:

Division of Safety & Buildings
Telephone (608) 261-6546
Telecommunications Device for the Deaf (TDD) (608) 264-8777
Department of Commerce
P.O. Box 7969
MADISON, WI 53707

Copies may also be obtained at the appointed time and place the hearing is held. Questions on the DEIS may be directed to Robert Langstroth (608) 264-8801 or Pat Hill (608) 266-3480.

Public Hearing (on DEIS)

Pursuant to s. ILHR 1.10 (4), the Department will hold a public hearing on the draft environmental impact statement. A public hearing is scheduled as follows:

**August 19, 1997
Tuesday
1:00 p.m.**

**Bascom Room
Best Western Inntowner
2424 University Ave.
MADISON, WI**

Written Comments

Interested people are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **September 2, 1997**. Any such comments should be submitted to Robert Langstroth at the Department of Commerce address noted above. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses. At the end of the comment period, the Department will review the comments, make modifications judged necessary, and prepare a final environmental impact statement (FEIS).

NOTE: A copy of the proposed chapter Comm 83 and related rules (Chs. Comm 85 and 91) may be obtained from the Department of Commerce, Division of Safety and Buildings at the same address and telephone numbers previously indicated. Public hearings on the proposed chapter Comm 83 and related rules (Chs. Comm 85 and 91) are scheduled as follows:

Public Hearings (on ch. Comm 83 and related rules)

**August 6, 1997
Wednesday
9:30 a.m. to
12:00 p.m. (noon)**

**Rooms 241, 243 and 245
Wis. Indianhead Tech. College
1900 College Ave.
RICE LAKE, WI**

**August 8, 1997
Friday
9:30 a.m. to 12:00 p.m. (noon)**

**Comfort Suites
1951 Bond Street
GREEN BAY, WI**

**August 19, 1997
Tuesday
9:30 a.m. to
12:00 p.m. (noon)**

**Bascom Room
Best Western Inntowner
2424 University Ave.
MADISON, WI**

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